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Previous References

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Letter References.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 9410

Part B for June 1937

SUBJECT.

Printed collection of the principal reports on the work done in England during the year 1936 by Counsel for the Head of Princes with regard to the draft Instrument of Accession.

WD 0418—GPB—22,500—29-8-36

CB 2179

Office of H.H. the Chancellor, Chamber of Princes

CB 55-86-9

Council House,
New Delhi,
19th June, 1937.

DEWAN'S OFFICE
22 JUNE 1937
No. 1523

Dear Sir,

Under instructions from His Highness the Chancellor I send you herewith a printed collection of the periodical reports on the work done in England during the year 1936 by Counsel for the Chamber of Princes with regard to the draft Instrument of Accession. These reports were confidentially received from time to time in this office but were not circulated so far. They are being made available to the States to show the work done in connection with the drafting of the Instrument and the various stages through which the draft passed before it was officially presented to the States.

Yours sincerely,
A. Wajid Khan,
U-Secretary
to H.H. the Chancellor,
Chamber of Princes.

Chy Sy
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CB
Put up draft
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CHIEF SECRETARY
23 JUN 1937
GOVT. OF MYSORE

CONFIDENTIAL
For private circulation only.

Periodical Reports of the work done in England in 1936 by JUDGE WILLIAM H. WADHAMS, Counsellor-at-law, as Counsel for the Chamber of Princes with regard to the Instrument of Accession of Indian States to the proposed FEDERATION OF INDIA.

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Issued under authority of
H. H. the Chancellor, Chamber of Princes.
1937.

REPORT No. 1

LONDON,

March 30th, 1936.

The India Office is at present preparing for transmission to each of the Rulers of Indian States a standard form of Instrument of Accession. It is proposed that this form shall consist of two parts, the first part to contain the general declarations required by the Government of India Act and other clauses which are applicable to all States, and the second part to contain the provisions (in schedules annexed to the first part) applicable to the peculiar requirements or conditions with respect to individual States.

My arrival is well timed. There have not been as yet any consultations with counsel for any States. There has not been as yet any submission to counsel of the form of Instrument of Accession proposed by the India Office. I consider this fortunate as it enables me to make certain fundamental suggestions before the Instrument has taken definite shape.

I immediately notified the Secretary of State for India of my arrival and was invited to a conference with Lord Zetland. I was cordially received by Lord Zetland. He informed me of the proposed general scheme of the Instrument of Accession as outlined above, and that the form was being drafted by the India Office. I emphasized the importance to the States of the Instrument of Accession as it would establish the relation of the States to the Federation; that before the Rulers could determine whether to join the Federation, the terms of the Instrument of Accession and its form must be agreed upon; that good-will was the vital force of the Federation necessary to its success; that to ensure the success of the Federation the enthusiastic support of the Rulers was essential and this support would only be possible if they were satisfied with the terms and form of the Instrument of Accession; that the restatement of their Sovereign rights would be an assurance that would promote confidence and other suggestions in the interests of the States. I called His Lordship's attention especially to the importance of the financial clauses and their construction with reference to the future obligation of the States.

Lord Zetland said he recognised the importance of these considerations and that after consultation he hoped it would be possible to prepare a standard form of Instrument of Accession which would be acceptable. He thought it important that all the States should use the same form containing the general clauses.

Lord Zetland suggested that the best way to proceed would be for Counsel to confer with Sir Maurice Gwyer, First Parliamentary Counsel, and to arrange for conferences with the counsel of other States for the purpose of examining the various suggestions.

Before leaving, Lord Zetland expressed his interest in the Chamber of Princes and his belief in its future as an Assembly of Rulers where the

Viceroy had the opportunity to confer with the whole body of Princes. His Lordship expressed the view that there were many matters outside the scope of the Federation which were within the sphere of the Chamber.

I further report that I have been in consultation with Gavin Simonds, K.C., Counsel for Bikaner, and also have made contact with W.T. Mockton, K.C., Counsel for Hyderabad, both of whom welcomed my arrival and gave assurance of their co-operation.

I shall confer with Mr. Gavin Simonds K.C., and with Professor Morgan as associate counsel for the Chamber of Princes as soon as they have received their instructions from their respective solicitors.

REPORT No. 2.

April 7th, 1936.

As forecast in my Report No. 1, the Secretary of State for India, Lord Zetland, arranged for a conference with Sir Maurice Gwyer, First Parliamentary Counsel. In this conference which continued for several hours, I discussed with Sir Maurice the general scheme of the Federation, as contained in the Government of India Act.

Sir Maurice stated:-

(1) That he was in charge of the preparation of a form for the Instrument of Accession, which might be called a standard form and which, as I reported, the Secretary of State for India proposed to send to the Rulers for their consideration.

(2) That the form had not been completed and that as yet there had been no conferences with representatives of the Indian States with respect to the exact nature of its clauses and that no draft had as yet been submitted to any representative of any Indian State.

(3) That the plan which he suggested for the Instrument of Accession was as follows:—

(a) A preamble.

(b) The clauses which were required under the Government of India Act.

(c) Such additional clauses as might seem appropriate, and

(d) Schedules annexed to the general form which would be applicable to individual Indian States.

(4) That he would be glad to discuss any suggestions with respect to the form of the Instrument of Accession or the clauses which it should contain.

(5) Sir Maurice stated that it would be desirable to settle the contents and form of the preamble and general clauses in London.

(6) That the schedules which would be annexed to the general form and which related to individual States would be later settled in India, where the Government would take up the particular questions applicable to individual States with the Rulers of such States or their advisers.

(7) That at the present stage of the consultations the views expressed by Counsel for the India Office or by Counsel for the Indian States should be considered informal and not binding upon any of the parties, but in the nature of a confidential exchange of views.

(8) That as it was impossible for the India Office to confer with a multitude of Counsel, it had been decided that Sir Maurice should hold conference with only three Conusel, viz. myself, as Chief Legal Adviser of the Chamber of Princes, W.T. Monckton, K.C., Counsel for the Nizam of Hyderabad, and Gavin Simonds, K. C., Counsel for His Highness of

Bikaner by reason for their previous familiarity with the Government of India Act.

(9) That there was no objection to these three Counsel conferring with such other Counsel, or Juniors, or representatives, as they desired, but Sir Maurice, for practical reasons, desired that any suggestions should be presented to him only through the Counsel named, with whom he would be glad at any time to confer.

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(1) I informed Sir Maurice that I was not authorised to make any binding commitments for the Chamber of Princes or for any Indian State, and that I entirely concurred in the suggestion that at the present stage of the consultations the views expressed should be considered informal and not binding upon any of the parties, but in nature of a confidential exchange of views.

(2) That I had not as yet advised the Chamber of Princes, or any individual State, as to whether the Indian States or any of them, should or should not join the Federation.

(3) That whether or not an Indian State should join the Federation could not be determined until the form and content of the Instrument of Accession was known—in other words, upon what terms an Indian State could, should it so desire, join the Federation.

(4) That good-will was the vital force upon which the success of the Federation depended.

(5) That in order to attain such success for the Federation it was essential not only that the requisite number of Rulers of Indian States should determine to join the Federation, but also that such terms should be offered them in the Instrument of Accession as to cause them to join with the assurance that their sovereign rights and internal autonomy were guaranteed, and that the financial obligations of the Indian States which joined the Federation were clearly defined.

(6) I stated that I should be very glad to confer with the King's Counsel representing Hyderabad and Bikaner, as suggested, and that I had already been in contact with them.

(7) Sir Maurice and I then discussed, from a technical point of view, the legal construction of a number of sections of the Government of India Act, for the purpose of a clarification and as bearing upon the form of the Instrument of the Accession, and I made certain suggestions, which will be taken up later for discussion.

(8) As a basis of study, I requested Sir Maurice to furnish me with a copy of the form of Instrument of Accession, tentatively drafted by the India Office, and he graciously undertook to supply me with this draft on Monday next, April 6th.

(9) As soon as I have received the Government draft of the Instrument of Accession, and after examining same, I will submit a further report.

REPORT No. 3.

April 7th, 1936.

I beg to advise you of the arrival of Sirdar K.M. Panikkar in London. We have had daily conferences and he is giving his valuable assistance, co-operating with me in every way.

I have had a further interview with Sir Maurice Gwyer, First Parliamentary Counsel, who informed me that he was not ready to deliver the tentative draft of the Instrument of Accession, which is being prepared by the India Office, as it had not yet been completed, but that he would do his best to furnish me with this draft of the Instrument before the Easter holidays.

I am pleased to inform Your Highness and the Chamber of Princes that the State of Hyderabad 's Counsel, Mr. W.T. Monckton, K.C., is acting in full co-operation with me. He has informed me that he had received instructions from Hyderabad to unite with me in every effort to obtain the best possible safeguards of the interests of the Indian States, and I have arranged with Mr. Monckton to present identical proposals for the general clauses of the Instrument of Accession.

The arrangement whereby the State of Hyderabad will support the Chamber of Princes in its negotiation through your Counsel with respect to the form and contents of the Instrument of Accession is of the utmost importance. By standing together the proposals will carry greater weight.

The co-operation of the States at this time is of the greatest importance. There should be no disagreement among them which would in any way weaken their position in conferring with the India Office.

I have made my position very clear as Chief Legal Adviser of the Chamber of Princes, that, in making suggestions and attending conferences concerning the form of the Instrument of Accession, it must be clearly understood that I am not authorised, and do not thereby indicate that any Indian State will accept the Instrument of Accession or accede to the Federation.

It can readily be understood that it is of vital importance to the Indian States that the Instrument of Accession should be as complete and perfect an instrument to safeguard their rights as it is possible to obtain and that there can be no determination as to whether or not any Indian State should join the League until it is known what the Clauses of the Instrument of Accession must contain, in order to be acceptable to His Majesty.

It must be remembered that the Instrument of Accession must contain certain provisions which are set forth in the Government of India Act, and it may contain additional sections defining and de-limiting the authority delegated by the Rulers to the Federation. It must, however, be in a form consistent with the scheme of the Act and it must also be in such form as is acceptable to His Majesty.

The terms and the form of the Instrument of Accession therefore have to be formulated and it is in negotiations for such formulation that your Legal Adviser is now engaged.

While the negotiations are pending no State should, in the opinion of your adviser, give any indication of any decision as to whether it will or will not join the Federation. I would therefore respectfully recommend that the Chamber of Princes advise the Rulers of Indian States not to commit themselves in any way with respect to Federation until the Chamber has ascertained the form and contents of the Instrument of Accession which is not being drafted.

The following general principles are guiding your Counsel in the negotiations with the India Office.

(1) That the treaty rights and agreements between the Rulers of Indian States and the King Emperor must be in all respects honoured and maintained.

(2) That the sovereignty of the rights of Indian States and the internal autonomy of their States must be recognised.

(3) That the functions delegated to the Federation must be clearly defined.

(4) That all powers not expressly delegated to the Federation are reserved to the Rulers respectively of the Indian States.

(5) That no greater burdens or obligations shall be imposed upon any Indian State than are imposed upon any other units of the Federation (British Provinces and Federated States).

(6) That the financial obligations of the Indian States with respect to any Federal duties, taxes or excises, or surcharges upon the same, shall be definitely determined.

(7) That the limitations of the legistative and executive authority of the Federation, which are delegated to the Federation from the States, shall be defined; and

(8) Generally, to protect the interests and rights of the Rulers of the Indian States in their relations with the Federation.

In accordance with instructions contained in my appointment as Chief Legal Adviser, I am now engaged upon formulating appropriate clauses for the Instrument of Accession to put into effect the above enumerated principles and, after consultation with associate Counsel, to present such clauses and discuss them in informal consultation with parliamentary Counsel, representing the India Office, for the purpose of obtaining, if possible, an agreement as to the form and contents of the Instrument of Accession which may be approved, without commitment, by your Legal Adviser, and transmitted to the Chamber of Princes for its information.

REPORT NO. 4.

April 20th, 1936.

After the Easter recess the work on drafting the Instrument of Accession is proceeding.

The Secretary of State for India, through the Parliamentary Counsel has furnished me with a draft Instrument of Accession prepared by the India Office. I sent the following cable to His Highness the Maharaj-Rana of Dholpur, Acting Chancellor of the Chamber:

"His Highness Dholpur, India.

Government's draft Instrument delivered to me examination indicates better than expected but requires amendment and additions without commitment to safeguard States interests. Report No. 4 follows. Best regards.

Wadhams."

I made it quite clear, as instructed by the Chamber of Princes, that the negotiations as to the form of the Instrument of Accession must not be taken as an indication that the Chamber of Princes was in any way committed to the Federation of India, and also that it did not indicate that any Rulers of Indian States, members of the Chamber of Princes, had determined to accede to the Federation.

In accordance with my instructions, I am engaged in negotiating for the best possible form of Instrument of Accession, in order that it may contain safeguards in the interests of the Indian States in conformity with the principles set forth in my last report. For that purpose every word of the Instrument has to be considered and weighed, and I have prepared fundamental and important suggestions, which are being carefully considered.

At the same time that I received the Instrument of Accession I also received a letter from the First Parliamentary Counsel, as follows:—

The Parliamentary Counsel,
Treasury Chambers,
Whitehall, S. W. 1.

"My dear Judge,

I enclose herewith the draft of a possible Instrument of Accession, and should be glad to receive any observations which you may wish to make upon it.

You will of course understand that I have no authority to negotiate, still less to agree, the form of the Instrument of Accession; but I need hardly say that your criticisms would be of great value to those with whom the ultimate decision will rest."

Yours Sincerely,

(Sd) Maurice Gwyer."

You will note from the letter of Sir Maurice Gwyer that it is quite clear that the present consultations concerning the Instrument of Accession in no way are a commitment of any kind, and that it is thoroughly understood that the ultimate decision will rest with the Rulers of the Indian States as to whether or not they will accede to the Federation of India.

It is my purpose to ascertain the best possible terms which can be obtained and, after this information is forwarded, the Rulers of Indian States will be in a position to decide as to what course to follow.

It is quite clear that, before reaching any decision, the Rulers of Indian States must have an opportunity to examine the form of Instrument of Accession which the advisers of the Rulers of Indian States report is the best which is obtainable and of which Parliamentary Counsel may advise His Majesty to signify his acceptance.

I shall continue to keep Your Highness and the Chamber of Princes advised of the progress of the work.

REPORT NO. 5.

INDIA HOUSE.
ALDWYCH,
LONDON, W.C. 2.

May 5th, 1936.

Since my last report of April 20th I have been in daily conference with respect to the Instrument of Accession, examining the many points which arise both as to the general form of the Instrument and as to the legislative list.

This work is of a highly technical nature and it is absolutely necessary in the interests of the Rulers of Indian States. Whether or not a Ruler determines to join the Federation is entirely for the Ruler himself to determine, but it is certainly of the utmost importance to a Ruler , whether he joins or not, that the Instrument of Accession should be in such a form that it does not permit any encroachments upon the existing rights of Rulers and that it safeguards the existing sovereignty and territorial integrity of his State and the privileges, rights and dignities of the Ruler.

The India Office will, as it has announced, circulate among the States a form of Instrument of Accession. Should this form be drawn in a manner to the disadvantage of the States it would have its effect not only upon the States which accepted it, and through it declared their intention to join the Federation, but it would also affect the States which did not desire to join the Federation, as it would create a precedent for the exercise of powers by the Crown and the Federation which should be used to great effect even in States to which it did not legally apply.

For these reasons the Chamber of Princes will realise the importance of obtaining as favourable a form of Instrument of Accession as possible, without of course in any way committing a State to sign such Instrument of Accession or join the Federation. There is no question but that this work has to be done and that all the States, members of the Chamber, are individually benefiting by the efforts which I am making now.

In the draft of the Instrument of Accession the Government, through the India Office, must necessarily take certain fundamental positions with respect to the Rulers of Indian States generally, and it is important that the States should be represented for the purpose of safeguarding their interests and obtaining the most favourable decisions.

For example, my work is directed to making certain :

That all powers, rights, authority and jurisdiction of the Ruler of an Indian State, which he does not expressly delegate to the Federation, are reserved to the Ruler ;

That the Ruler maintains his existing sovereignty not only in his relations with the Crown but also in his relations with the Federation;

That the territorial integrity of Indian States shall not be impaired ;

That existing treaties and engagements shall be inviolate and inviolable :

That in matters which affect the whole of India, including his State, the Rúler shall have his due share; not only in participating in Federal legislation through his representatives but also where desirable, in the exercise of the administration of Federal laws in his State ;

That the internal government of the State shall be protected from encroachment.

All these matters and other interests of the Rulers must be safeguarded in the Instrument of Accession, and it is with respect to them that I am holding daily conferences, preparing memoranda, and drafting clauses.

In the course of this work I have already drafted and discussed some 30 general suggestions, and, in addition to giving my special consideration to each of the 59 items in the Federal Legislative List found in Schedule 7 of the Act, I am preparing safeguarding clauses for the Instrument of Accession. With reference to each of the clauses and items I am preparing memoranda and briefs. I am also examining each section of the Act itself which may in any way be applicable to Indian States, and I can confidently report that substantial progress has been made in the interests of the Rulers.

REPORT. NO. 6.

INDIA HOUSE,

ALDWYCH,

LONDON, W.C. 2.

May 19th, 1936.

Since my last report I have had several conversations with Sir Reginald I.R. Glancy and Mr. Patrick of the India Office, and also with Gavin T. Simonds, K.C., Counsel for His Highness of Bikaner, and W.T. Monckton, K.C., Counsel for the Nizam of Hyderabad.

I have received a preliminary draft Instrument of Accession from the Counsel for Bikaner and Counsel for Hyderabad confidentially submitted for my personal examination, together with papers containing suggestions and notes with respect to Federation.

Mr. Gavin T. Simonds, K.C., was appointed a member of the Tribunal which is hearing the Income Tax leakage investigation, and Mr. Monckton, K.C., was also briefed as Counsel in this investigation. In view of the engagements of these Counsel I went to Paris on May 7th, and returned on May 14th to London to continue my work on the Instrument of Accession. I have examined the Instruments of Accession submitted by Mr. Gavin Simonds, K.C. and Mr. Monckton, K.C. and the papers accompanying them, and I am now preparing a preliminary draft of the Instrument of Accession together with a memorandum explanatory of the clauses proposed by me. As soon as my proposed draft and memorandum have been examined by these Counsel, we are planning to hold a joint session for conference with a view, if possible, to obtaining a uniform draft Instrument of Accession to submit to the India Office. This work has necessitated examination and consultation with respect to numerous sections of the Government of India Act, and of the schedules thereto annexed.

I am enclosing herewith a brief synopsis of some of the clauses suggested by me for the Instrument of Accession for the purpose of safeguarding the rights of the Rulers of Indian States. These suggestions do not cover all the clauses proposed for the Instrument of Accession; there are in the Government of India Act itself certain provisions which under the Act must be included in the Instrument of Accession and which are not contained in the synopsis.

I am also working upon a number of additional clauses which are not included in the synopsis and which I will forward later for your information.

The work in London at the present time is confined to the general clauses for the Instrument of Accession which it is intended shall be applicable to all States. The provisions with respect to individual States are not now being considered by the India Office which has announced that these questions will be taken up at a later time in India with Rulers of individual States and their representatives and Counsel.

It has, however, been necessary to give attention to Schedule 7 annexed to the Government of India Act, which contains the Federal Legislative List. That list enumerates the matters concerning which the Federal Legislature has power to make laws.

A State, which determines to join the Federation is required to specify which of the matters in that schedule it designates as matters with respect to which the Federal Legislature is empowered to make laws for the State.

In addition to naming the items in this list the individual State may place limitations upon the power of the Federal Legislature to make laws for that State with respect to any authority of the Federation with respect to any of these laws, legislative or executive.

I have prepared a number of clauses of a general nature with respect to the limitation of legislative authority and with respect to the limitation of the exercise of executive authority. The executive authority naturally divides itself into functions; the control and direction of policy which, from its very nature, is Federal, and administration which may be either Federal or State, and appropriate clauses have been prepared by me to protect the rights of the States.

The work with respect to individual States will have to be taken up later by each of the States, the Ruler of which decides to join the Federation. The work now being done by your Counsel is for the purpose of perfecting the Instrument of Accession in its form and content with a veiw to safeguarding the rights and protecting the interests of the Indian States.

It is clearly understood that neither the Chamber of Princes or any one of its members is committed to approve the Instrument of Accession which may be formulated by Counsel, nor is the Chamber or any one of its members thereby committed to join the Federation. The question whether any Indian State should or should not join the Federation is a question to be determined by the Ruler of the Indian State, and it is respectfully submitted that he cannot make such determination until the conditions of Federation as contained in the Instrument of Accession are submitted to him and his Counsel for examination.

I will continue to keep Your Highness fully informed of the progress of the work.

Enclosure 19th May, 1936.

BRIEF SYNOPSIS OF SOME CLAUSES FOR THE INSTRUMENT OF ACCESSION PROPOSED AS SAFEGUARDS.

1. In preamble, reaffirmation of privileges, rights and dignities of the Ruler, and guarantee of treaties, Sanads and other engagements as inviolate and inviolable.

2. Assurance that the treaties, Sanads and other engagements will be observed by all authorities in India and by the Federation.

3. The Federal jurisdiction to extend only to matters agreed in the Instrument of Accession to be Federal.

4. Authority and jurisdiction with respect to Federal Matters to be exercised exclusively by the Federation..

5. Reservation to the Ruler of all powers, authority, rights and jurisdiction not expressly delegated to the Federation.

6. Limitation of the words " any other Federal authority " in Section 6 (1) (a) to authority delegated by the Instrument of Accession.

7. Limitation of the power of the Federal Legislature to make laws for the State to the specific items in the Schedule annexed to the Instrument of Accession. (A detailed study of this schedule will be made later. I am preparing a memorandum with respect to the items and limitations of legislative and executive authority with respect to each item).

8. Provision that all customs, duties, taxes and excises levied by the Federation shall be uniform throughout the Provinces and the Federated States.

9. No financial obligation and no direct or indirect taxation on the States other than as expressly authorised by the Instrument of Accession.

10. No surcharge to be imposed, no corporation tax levied except in conformity with the conditions specified. (Which are those of the Hydari memorandum).

11. Limitation of the Exercise of Executive Authority of the Federation to matters of Federal Policy except as expressly specified in the Instrument of Accession.

12. Limitation of the administration of any Federal law in the State, except as expressly delegated to the Federal authorities.

13. Safeguarding the existing rights, privileges and immunities of the Ruler of the State.

14. Authorizing the filling of vacancies in the Council of State and Federal Assembly by the Ruler of the State.

15. Safeguarding against any jurisdiction of Parliament over the States in any respect.

16. Providing that unless the Federation is established before a certain date, that the Ruler shall not be deemed to have acceded to the Federation.

William. H. Wadhams.

Note. The above synopsis does not include all of the clauses required by the Act.

(Additional clauses proposed by me will follow later).

REPORT NO. 7.

INDIA HOUSE,

ALDWYCH,

LONDON, W.C. 2.

19th June, 1936.

I continued my work in London until May 28th, when the Spring Vacation, during which all Counsel engaged on Federation were not available until June 9th, occurred.

I left for Paris on May 28th, and continued my work on Federation with respect to the Instrument of Accession in Paris until June 9th, when I returned to London.

The Conferences were then resumed, and I have been steadily engaged in the examination of suggestions, the preparation and modification of clauses, and the preparation of memoranda, with respect to the Instrument of Accession.

I have been in conference with Sir Reginald Glancy and Mr. P.J. Patrick, Political Secretary of the India Office and Sir Maurice Gwyer, First Parliamentary Counsel, who is acting as legal adviser of the India Office.

I have also been in conference with Gavin T. Simonds, K.C., representing His Highness of Bikaner, and with W.T. Monckton, K.C., representative of Hyderabad, and their juniors and associates. We have been comparing proposed drafts of a uniform or standard Instrument of Accession, containing the general clauses which the India Office desires to have applicable to all States.

I have been giving my special attention to the provisions and clauses to be inserted in the Instrument, and have suggested such clauses as seem to me desirable for the safeguarding of the interests of the Indian Rulers in conformity with the synopsis heretofore sent by me to Your Highness.

I shall keep Your Highness fully informed of the progress of the work.

REPORT NO. 8.

INDIA HOUSE,

ALDWYCH,

LONDON, W.C. 2.

July 3rd, 1936.

Since my last report to Your Highness, dated June 29th, 1936, I have continued my work in London, on behalf of the Chamber of Princes, with special reference to the Instrument of Accession and the Instrument of Instructions.

The general clauses of a uniform Instrument of Accession are now being drafted by Parliamentary Counsel, representing the India Office, and your legal adviser has graciously been invited to participate in the consultations concerning the form of the Instrument of Accession. This has also necessitated the consideration of appropriate provisions to be inserted in the Instrument of Instructions, which will be prepared later.

I am pleased to report to your Highness that my efforts on behalf of the Rulers of Indian States, members of the Chamber of Princes, has met with considerable success, as through my negotiations and conferences I have been able to obtain careful consideration of all of the essential clauses proposed by me in the interest of the rulers.

A draft Instrument of Accession has been submitted by me today to the India Office, for consideration, together with a memorandum prepared by me, with respect to its clauses.

Conferences will now begin with representatives of the India Office, and with Parliamentary Counsel in the preparation of the standard form of the general clauses of the Instrument of Accession. This will later be transmitted by the Secretary of State for India to the Government of India. The Government of India will then send this standard form to the Rulers of the Indian States for their consideration.

Thereafter it is proposed that the Government of India will take up with each of the Rulers, his representatives and Counsel, the special provisions with respect to his State, which will be set forth in schedules and annexed to the standard form of general clauses.

In the draft form of the Instrument of Accession presented by me for consideration by the India Office, I have taken special care that the sovereignty of the Rulers, their powers, authority and rights, are safeguarded.

Among others with whom I have had the privilege of conferring concerning my work on the Instrument of Accession, as Adviser to the Chamber of Princes, was the Earl of Willingdon.

It is understood that the draft form of Instrument of Accession now being prepared, is not to be considered as final, nor as in any way a committment of the Chamber of Princes, or any of its members to approve the same, or to indicate an attitude either for or against federation.

My efforts are directed towards obtaining an Instrument of Accession which will fully protect the sovereignty of the Ruler and the integrity of his State.

I shall keep Your Highness fully informed of the progress of the work.

REPORT NO. 9.

INDIA HOUSE,

ALDWYCH,

LONDON, W.C. 2

14th July, 1936.

Since my last report dated July 3rd, 1936, I have continued my work in London on behalf of the Chamber of Princes. I have been invited to attend at a number of conferences with the Parliamentary Counsel representing the India Office.

As a result of these conferences, the safeguards proposed by me in conformity with the provisions put forward by the Chamber of Princes in their memoranda, together with suggestions advanced by me based upon my study of the Government of India Act, have been incorporated in the draft of the proposed Instrument.

The conferences with Parliamentary Counsel have resulted in the preparation of a draft form of Instrument which with the recommendations of Parliamentary Counsel is being examined by the Secretary of State for India and his officials. Upon the conclusion of this examination I have been advised that I will be invited to further conferences.

For the information of the Chamber I beg to advise you, with reference to the synopsis of clauses dated 19th May 1936, and transmitted to Your Highness with my report No.6, as follows :

1. It is proposed that the provisions in No.1 should be contained in a Royal Proclamation in preference to being incorporated in the preamble of the Instrument.

2. It is proposed that the provisions referred to in No. 2 should be stated substantively as rights in the Schedules annexed to the Instrument.

3. No. 3 is included in substance in the proposed draft Instrument.

4. No. 4 is being considered by the India Office.

5. No. 5 is included in the Instrument of Accession.

6. No. 6 is sufficiently covered by other clauses in the Instrument of Accession.

7. No. 7 is included in the proposed Instrument, the details as to each State to be set forth in Schedules annexed to the general form.

8. A clause covering No. 8 has been proposed and although approved in principle, not adopted by reason of practical difficulties. The matter is having further consideration.

9. No. 9. is included in the Instrument by the general clause covering all legislation.

10 It is proposed to include this clause in the Instrument of Instructions.

11. This clause is covered in substance by the proposed draft.

12. This clause is covered in substance by the proposed draft.

13. This clause is to be included in the Instrument of Instructions.

14. No. 14 is to be provided for by an amendment of the Act or other appropriate method.

15. This clause is included in the proposed draft.

16. This clause is included in the proposed draft.

Among the clauses for the Instrument of Accession safeguarding the interests of the members of the Chamber prepared by me and transmitted to the India Office with the approval of Parliamentary Counsel, is one which safeguards the sovereignty of the Ruler and his power and authority and rights. This clause is of the utmost importance to the Rulers of Indian States who decide to accede to the Federation. By this clause the sovereignty of the Ruler in his State is recognised as continuing, and that no part of that sovereignty is surrendered to the Federation.

Furthermore, the clause provides that all powers not delegated by the Ruler to the Federation and the exercise thereof are reserved to the Ruler of the Indian State which joins the Federation. This clause prepared by me and approved by Counsel for the India Office reads as follows:

> " Nothing in this Instrument affects the continuance of my sovereignty in and over this State and subject to the express terms of this Instrument and to any Federal law made to this State by virtue thereof, all powers, authority and rights of the Ruler in and over this State and the exercise thereof are reserved to the Ruler of this State ".

This clause is in conformity with the demand contained in the safeguards of the Chamber of Princes that the sovereignty of the Ruler must be unimpaired and the internal integrity of his State preserved.

This provision prepared by me is of a fundamental character defining the relation of a Federated State and the Ruler thereof to the Federation and not only recognising the sovereignty of the Ruler, but reserving to him all powers, authority and rights excepting those which he has in his Instrument of Accession authorised the Federation to exercise.

The powers which by the terms of the Instrument of Accession are delegated to the Federation will, in the Instrument and the Schedules thereto annexed, be clearly defined and limited, and the exercise of the executive

authority of the Federation will likewise be limited and confined to those matters which are within the Federal sphere.

The Instrument of Accession also contains a clause prepared by me providing that " Nothing in the Instrument shall be construed as authorising Parliament to legislate for, or exercise jurisdiction over an Indian State or its Ruler in any respect, " and other clauses for safeguarding the rights and interests of the Rulers of Indian States.

My conferences are continuing from day to day. I shall keep Your Highness fully informed of the progress of my work on behalf of the Chamber of Princes.

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REPORT NO. 10.

52, AVENUE DES CHAMPS-ELYSEES.
PARIS (8-E)
July 29th, 1936.

The first stage of the work on the Instrument of Accession has been concluded. I thereupon sent Your Highness the following cable:

"DRAFT INSTRUMENT ACCESSION FORWARDED BY INDIA OFFICE TO SIMLA NOT SHOWN COUNSEL BUT AM ASSURED CONTAINS MAIN POINTS PROPOSED BY ME IN INTEREST RULERS FULL REPORT FOLLOWS REGARDS—WADHAMS"

As legal adviser to the Chamber of Princes, I was invited to attend all the consultations and as a result of my efforts, the original Draft Instrument of Accession proposed by the India Office was changed in form and amended pursuant to suggestions made by me in the informal conferences with Parliamentary Counsel representing the India Office.

In addition to my conferences with Parliamentary Counsel, I also conferred with officials of the India office.

I was informed by the India Office that as the Government of India desired a preliminary draft of the Instrument of Accession as soon as possible, that further consultations would be suspended and that a draft had been sent to Simla by the India Office for the purpose of ascertaining the views of the Government of India.

I was further informed that the draft which had been submitted to Simla contained the main points proposed by me in the interest of the Rulers of Indian States and also that such proposals as I had made which were not contained in the draft had also, together with the memoranda submitted by me, been transmitted to the Government of India.

In a final conference which I had with Lord Zetland, Secretary of State for India, he assured me that all the proposals which I had made would be given the most careful consideration and that further after the views of the Government of India had been received, the form of the Instrument of Accession would be further considered by the India Office.

I thereupon transmitted to Parliamentary Counsel, with a request that the India Office should forward to the Government of India, the following documents, copies of which I enclose:

1. Revised Draft Instrument of Accession (July 17th, 1936), which is the form under discussion at the conclusion of the informal consultations with Parliamentary Counsel.

2. Memorandum by Judge Wadhams with respect to the Draft Instrument of Accession on conclusion of Informal consultations with Parliamentary Counsel.

These two documents give full information as to the status of the Instrument of Accession at the conclusion of the first stage of the work with respect to the Instrument of Accession in London.

The first proposed Instrument of Accession presented to your Counsel for consideration in London was substantially the same as that annexed to the White Paper submitted to Parliament in March 1935. Your Counsel took the position that such an Instrument did not contain the requisite safeguards which had been demanded by the Chamber of Princes.

Your Counsel is not advised as yet by the India Office as to the exact form of the Instrument as forwarded by the India Office to the Government of India, but expects to receive the same within a short time. As soon as a copy of this Instrument has been received, Counsel will examine the same and confer further with the authorities in London.

As the work in London was temporarily suspended, your Counsel proceeded to his office in Paris but will return to London whenever his presence there will be of advantage to the Chamber.

I will keep Your Highness fully informed on my work on behalf of the Chamber of Princes.

MEMORANDUM BY JUDGE WADHAMS WITH RESPECT TO THE DRAFT INSTRUMENT OF ACCESSION ON CONCLUSION OF INFORMAL CONSULTATIONS WITH PARLIAMENTARY COUNSEL.

July 18th, 1936.

At the conclusion of the conferences with Sir Maurice Gwyer, and as a result of the informal discussions which have taken place, the draft Instrument of Accession submitted by Counsel was in the form enclosed herewith. The following points may be noted.

1. All reference to treaties, Sanads and engagements in the Instrument of Accession have been eliminated on the assumption :—

(*i*) That the maintenance of the privileges, rights and dignities of the Ruler and existing treaties, Sanads and engagements with His Majesty the King Emperor, will be reaffirmed by an appropriate Royal Proclamation.

(*ii*) That where the subject matter of any treaty, Sanad or engagement is brought by the Instrument of Accession within the functions of the Federation, and where existing rights under such Treaty or other engagement are reserved or continued, that instead of referring to the treaty the substantive rights will be restated de novo and in toto in the Schedules annexed to the general clauses of the Instrument of Accession.

2. Instead of reference being made to surcharges in the Instrument of Accession, that there will be a provision in the Instrument of Instructions with respect to surcharges which should contain, in addition to the provisions of Section 141 of the Act, the additional conditions contained in the Hydari Memorandum concerning surcharges.

3. Instead of a provision in the Instrument of Accession with respect to the existing privileges and immunities now enjoyed by the Ruler of an Indian State as established by the British Indian Civil or Criminal Codes and other laws or regulations of the Government of India, that these privileges and immunities will be safeguarded in the Instrument of Instructions.

4. That instead of a provision in the Instrument of Accession making clear the right of a Ruler to fill vacancies in the Council of State or the Federal Assembly that provision will be made therefor by amendment of the Government of India Act or other suitable method.

With respect to the enclosed draft of general clauses of the Instrument of Accession:

It was the understanding of Counsel that the Instrument of Accession would consist:

a. Of general clauses:

That these general clauses should constitute a standard form for use of all States (with the exception of some of the minor States for which it may not be suitable)

That the purpose of the consultations at the present time was, so far as possible, to perfect the general clauses for a standard form.

b. That annexed to the general form would be Schedules:

Schedule 1. With respect to the matters accepted as matters with respect to which the Federation is empowered to make laws for the State together with the limitations to which the power of the Federal Legislature to make laws for the State and the exercise of the executive authority of the Federation in the State are respectively to be subject.

Schedule 2. Administrative agreements.

Schedule 3. Particulars required by Section 147 (7).

Schedule 4. Rights unaffected under Clause II of the Instrument.

Schedules 2, 3 and 4 would not apply to all States and would only be annexed to the Instrument of the States in which they were applicable.

It was the understanding of Counsel that the preparation of these Schedules would be taken up by the Government of India with the Rulers of the Individual States, and the matter to be therein contained was therefore not considered at this time.

It was the understanding of Counsel that the form and content of the enclosed draft Instrument was acceptable to Parliamentary Counsel, with the following exceptions :

Clause 3 of the Instrument reads :—

> " All functions exercisable by the Federal authority in relation to this State by virtue of Clause 1 of this Instrument, shall be exercised exclusively by a Federal authority except in so far as the same are exercisable by the Ruler of this State, the same may be exercised by him. "

The purpose of this clause is to provide that within the Federal sphere the exercise of the Federation shall be exclusive, excepting in so far as the Ruler is authorised to exercise concurrent jurisdiction, and thereby prevent a conflict of authority. Section 294 (2) does not fully cover the point ; it omits the Federal Railway Tribunal and, it may be, other Federal Authorities enumerated in the Act. It does not cover any Board or authority which may be established (other than by the Legislature) as contemplated in Section 6 (1) (a) pursuant to which the Ruler declares that he accedes to the Federation with the intent that ".....any other Federal authority established for the purpose of the Federation shall .....exercise in relation to his State such functions as may be vested in them by or under this Act ".

Moreover, Section 294 (2) is in the form of a prohibition with respect to jurisdiction formerly exercisable on His Majesty 's behalf and not an expression that the functions exercisable by any Federal authority shall be exclusive, and such prohibition is limited to an exercise within the Federated State and may not apply to Federal functions exercisable without the Federated State but within the Federation.

The intent of the proposed clause is to provide that all functions exercisable by the Federation or by a Federal authority shall be exercised exclusively by such Federal authority whether within the State or generally for the Federation.

The proposed clause is important, for it defines the division of authority. It would be of value to the Federal court in determining debatable questions inasmuch as the Court 's enquiry would be "Is the function exercisable by the Federal authority ?" and if that question be determined in the affirmative it would follow that no other authority had jurisdiction.

Section 6 (4) provides that the terms of the Instrument of Accession must not be inconsistent with the scheme of Federation embodied in this Act, and the proviso continues " The provisions of this Act shall, in relation to the State, have effect subject to the provisions of the instrument".

It is submitted that this proposed clause is not "inconsistent with the scheme of Federation embodied in the Act ", and defines the effect which the provisions of the Act have in relation to the State.

The proposed clause would be an assurance that the Rulers would not be subject to two masters in respect of their obligations to the

Federation, and in the performance of the details of the Federal administration.

Clause 4. The third paragraph of Clause 4 as contained in the revised draft submitted herewith should stand as drafted, since the draft clearly states what is intended.

If, however, the India Office prefers a more condenced form, the following clause is suggested as an alternative (this alternative being preferable to the course of merely omitting the words "it being intended that" to the end of the clause).

"Where under the First Schedule hereto the power of the Federal Legislature to make laws for this State with respect to any matter specified in that Schedule is subject to a limitation the executive authority of the Federation shall not be exercisable in this State with respect to such matter otherwise than within the limits within which the Federal Legislature may make laws for this state or otherwise than in accordance with and subject to the said limitation."

Clause 5. This clause ought to stand, especially as Section 285 of the Act may be considered (although such was not the intention) as giving jurisdiction to the Federal Court to interpret a treaty between the Ruler and the Crown. This clause is designed to make clear that treaty rights and other agreements with the Crown with respect to matters not included in the Federal sphere by the Instrument are not subject to the jurisdiction of the Federal Court.

The Instrument of Accession should contain a declaration of the relation of the Ruler to His Majesty, that his rights and obligations in relation to the Crown which have not been transferred to the Federal sphere continue unimpaired, and that therefore neither the Federal Court nor any other Federal authority has jurisdiction to determine the validity or construe the existing treaties or other obligations or agreements with respect to such matters between the Crown and the Ruler.

If it be deemed preferable not to make specific reference to the Federal Court, the following clause is submitted for consideration as an alternative to Clause 5:

> "Nothing in this Instrument shall affect my rights and obligations in relation to the Crown with respect to any matter not within the functions exercisable by or on behalf of the Federation by virtue of this Instrument, and no Federal authority shall have jurisdiction with respect to such rights and obligations".

Such a clause will be an assurance that the relationship outside the Federal sphere will continue with the Crown without interference by the Federation.

Clause 7. In place of the words "save as otherwise herein provided" contained in the joint draft of July 2nd, 1936, the words "subject to the express terms of this Instrument and to any Federal Law made for this State by virtue thereof" have been substituted in accordance with the suggestion of Parliamentary Counsel.

It is of importance that there be no further change in this clause, and especially that the word " reserved " in the last line thereof should be retained.

The other clauses require no further comment at this time, with the exception of the clause proposed for use in some of the Instruments and set forth in (d) at the end of the Instrument, reading " Nothing in this Instrument is intended or shall be deemed to affect the rights set forth in the fourth Schedule hereto annexed ". This clause is intended to reserve rights which could not be reserved by a limitation of the items in Schedule 7 of the Act. It is intended to enable the Governor General to prevent legislative action affecting a Federated State through interference with an existing right now enjoyed by the Federated State outside its own boundaries.

It is within the intent and purview of the Act as being authorised under Section 6 (1) (a) and Section 6 (4) namely the acceptance of legislative authority subject to the Instrument of Accession.

The Instrument must, as the Act provides, be consistent with the scheme embodied in the Act, but on the other hand the Act itself provides that the provisions of the Act in relation to an Indian State shall have effect subject to the provision of the Instrument of Accession.

The Instrument is a charter of the Ruler with respect to the new Federation. It may contain any assurances consistent with the Act which are acceptable to His Majesty. It is submitted that it should contain all the assurances which even though they may be a re-statement of existing rights, will set forth in clear declarations the relation of the Ruler to the Federation and the Crown.

It is understood that the present draft is not conclusive and that there will be further opportunity to suggest amendments or additions before the Instrument is transmitted to the Rulers for their consideration.

———

REVISED DRAFT INSTRUMENT OF ACCESSION.
(17th July, 1936).

INSTRUMENT OF ACCESSION of ..... (insert full name and title).

WHEREAS proposals for the establishment of a Federation of India comprising such Indian States as may accede thereto and the Provinces of British India constituted as autonomous Provinces have been discussed between representatives of His Majesty's Government, of the Parliament of the United Kingdom, of British India and the Rulers of the Indian States.

AND WHEREAS those proposals contemplated that the Federation of India should be constituted by an Act of the Parliament of the United Kingdom and by the accession of Indian States.

AND WHEREAS those proposals have been approved by Parliament and provision for the constitution of a Federation of India is made in the Government of India Act, 1935 but it is by that Act provided that the Federation shall not be established until such date as His Majesty may by proclamation declare and such declaration cannot be made until the requisite number of Indian States have acceded to the Federation.

AND WHEREAS the said Act cannot apply to any of my territories save by virtue of my consent and concurrence signified by my accession to the Federation.

NOW THEREFORE

I .....

(insert full name and title).

Ruler of.....

(insert name of State).

In the exercise of my sovereignty in and over my said State.

For the purpose of co-operating in the furtherance of the interests and welfare of India by uniting in a Federation under the Crown by the name of the Federation of India with the Provinces called Governors' Provinces and with the Provinces called Chief Commissioners' Provinces and with the Rulers of other Indian States.

Do hereby execute this my INSTRUMENT OF ACCESSION and

1. I HEREBY DECLARE that subject to His Majesty's acceptance of this Instrument, I accede to the Federation of India as established under the Government of India Act, 1935 (hereinafter referred to as "The Act") with the intent that His Majesty the King, the Governor General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof and for the purposes only of the Federation, exercise in relation to the State of.....(hereinafter referred to as "this State") such functions as may be vested in them by or under the Act.

2. I HEREBY ASSUME the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. ALL FUNCTIONS exercisable by any Federal authority in relation to this State by virtue of clause 1 of this Instrument shall be exercised exclusively by a Federal authority except in so far as the same are exercisable by the Ruler of this State, the same may be exercisable by him.

4. I ACCEPT the matters specified in the First Schedule hereto as the matters with respect to which the Federal Legislature may make laws for this State, and in this Instrument and in the said First Schedule I specify the limitations to which the power of the Federal Legislature to make laws for this State, and the exercise of the executive authority of the Federation in this State, are respectively to be subject.

The Federal Legislature shall not have power to make laws for this State save with respect to the matters so specified and subject to the said limitations.

Where under the First Schedule hereto the power of the Federal legislature to make laws for this state is subject to a limitation the exercise of the executive authority of the Federation in this State shall be limited to the same extent, it being the intent that the said executive authority shall not be exercisable in this state with respect to any matter specified in the said First Schedule otherwise than within the limits within which the Federal Legislature may make laws for this State or otherwise than in accordance with and subject to the limitations specified in the said First Schedule.

5. NOTHING in this Instrument shall be construed as conferring on the Federal Court or any other Federal Authority, jurisdiction to determine the validity, effect or interpretation of any treaty, Sanad, grant or other engagement between this State and the Crown provided that the foregoing provisions of this clause do not apply to this Instrument or any supplementary Instrument of Accession executed by the Ruler of this State to such Agreements as are mentioned in Sections 204 (1) (a) of the Act.

6. ANY reference in this Instrument to laws of the Federal Legislature shall be construed as including a reference to Ordinances promulgated Acts enacted and laws made by the Governor General of India under Sections 42, 43, 44, and 45 of the Act.

7. NOTHING in this Instrument affects the continuance of my sovereignty in and over this State and subject to the express terms of this Instrument and to any Federal law made for this State by virtue thereof all powers, authority and rights of the Ruler in and over this State and the exercise thereof are reserved to the Ruler of this State.

8. NOTHING in this Instrument shall be construed as authorising Parliament to legislate for or exercise jurisdiction over this State or its Ruler in any respect.

Provided that the accession of this State to the Federation shall not be affected by any amendment of the provisions of the Act mentioned in the Second Schedule thereto, and the reference in this Instrument to the Act shall be construed as references to the Act as amended by any such amendment, but no such amendment shall, unless it is accepted by the Ruler of this State in an Instrument supplementary to this Instrument, extend the functions, which by virtue of this Instrument, are exercisable by His Majesty or any Federal authority in relation to this State.

9. THE SCHEDULES hereto annexed shall form an integral part of this instrument.

10. THIS INSTRUMENT shall be binding on me as from the date on which His Majesty signifies his acceptance thereof, provided that if the Federation of India is not established before....the day of Nineteen hundred and , this Instrument shall, on that day, become null and void for all purposes whatsoever.

11. I HEREBY DECLARE that I execute this Instrument for myself, my heirs and successors, and that accordingly any reference in this Instrument to me or to the Ruler of this State is to be construed as including a reference to my heirs and successors.

THIS INSTRUMENT OF ACCESSION (then follows th eattestation to be drawn with all due formality appropriate to the declaration of a Ruler).

The following clauses to be added in the Instrument of those States to which they apply.

a. **Note.** The following clause to be added where administrative agreements are made.

TERMS OF agreements with respect to the administration in this State of laws of the Federal Legislature applying therein have been mutually agreed between me and the Governor General and are set out in the Second Schedule hereto annexed.

This Instrument of Accession is executed on the assurance that the said agreements will be executed. The said agreements when executed shall be deemed to form part of this Instrument, and shall be construed therewith and have effect accordingly.

b. **Note.** The following clause to be added where the provisions relating to water supplies are not desired.

The provisions contained in Part VI of the Act with respect to interference with Water Supplies, being Sections 130 to 133 inclusive of the Act, are not to apply in relation to this State.

c. **Note.** The following clause to be added where there are contributions or immunities etc.

THE particulars to enable due effct to be given to the provisions of Sections 147 and 149 of the Act, are set forth in the third Schedule hereto annexed.

d. **Note.** The following clause is to be added where there are rights reserved which are not included in the limitations of the items in Schedule 7 of the Act.

NOTHING in this Instrument is intended or shall be deemed to affect the rights set forth in the Fourth Schedule hereto annexed.

REPORT NO. 11.

52, AVENUE DES CHAMPS-ELYSEES.

PARIS (8-e),

August 25th, 1936.

The revised draft Instrument of Accession circulated by the Government of India to the Indian States has been sent me by the India Office.

Upon examination it appears to your counsel to be incomplete and will require careful consideration.

The importance of this Instrument to the Rulers cannot be over estimated. It should contain all safeguards appropriate to such a constitutional document and there should also be assurance that other safeguards, which may be inappropriate to this Instrument but which are essential to protect the interests of the Rulers, are otherwise provided for as I have suggested in my Reports to the Chamber of Princes.

In view of the transfer of the consideration of the Instrument from London to India, my presence in India is required for further consultations. I am therefore returning to India where I anticipate conferring with Your Highness with respect to the interests of the Chamber of Princes and with the Government of India on behalf of the Chamber.

I will keep Your Highness fully informed.

REPORT (FINAL) NO. 12.

BOMBAY,

September 15th, 1936.

As directed in my appointment as Legal Adviser to the Chamber of Princes on Federation matters, I proceeded to London sailing from Bombay on March 5, 1936, and conferred with the Secretary of State for India, with Sir Maurice Gwyer, First Parliamentary Counsel, and representatives of the India Office and others, on Federation matters.

I have given my special attention to the form of the Instruments of Accession and to the contents of the Instrument of Instructions, and respectfully submit my final report to the Chamber of Princes.

Following my Report on the Instrument of Accession is a Report on the Instrument of Instructions and also certain proposed amendments of the Act suggested by me in the interest of the members of the Chamber of Princes. I also enclose for your consideration and assistance, suggestions with respect to the uniform limitations in Schedule I to be annexed to the Instrument of Accession.

A. Concerning the Instrument of Accession.

The Instrument of Accession is a Constitutional document.

The preliminary draft Instrument submitted to me for examination and suggestion by the India Office was not in the most appropriate form for a Constitutional document, being in the form of a contract in the third person, and without recitals of purpose.

At my suggestion, the form of the Government draft Instrument was changed to the first person singular, and recitals of purpose were added to the Instrument.

My suggestion that the Instrument of Accession should be attested with all due formality appropriate to the declaration of a Ruler, was approved and adopted, and will be found at the end of the Government draft Instrument circulated by the Government of India.

A number of clauses were modified and several added to the Government draft Instrument at my suggestion, as more fully appears in the following Report with respect to the Government draft Instrument of Accession transmitted by the Government of India to the Rulers of Indian States. I have drawn this Report in the form of a summary of Principles underlying the Constitution of the Federation expressed in the Instrument of Accession. In this summary, I have suggested an amendment which, in my opinion, is fundamental, and five additional clauses in the interest of the Rulers, which I advise the Chamber of Princes should be added to the Government draft Instrument.

SUMMARY OF PRINCIPLES UNDERLYING THE CONSTITUTION OF THE FEDERATION OF INDIA EXPRESSED IN THE INSTRUMENTS OF ACCESSION.

1. The constitution of the Federation is defined with respect to an Indian State by its Instrument of Accession.

The Constitution of the Federation of India with respect to Indian States consists of the Instrument of Accession, and those provisions of the Government of India Act, 1935, which are made applicable to an Indian State by the Instrument of Accession of its Ruler.

Although one of the recitals in the Government draft states that " provision for the Constitution of a Federation of India has now been made in the Government of India Act, 1935 ", the Act is not the whole Constitution with respect to Indian States.

It is provided in Section 6 (1) that the Ruler accedes to the Federation with the intent that His Majesty the King, the Governor General of India, the Federal Legislature, the Federal Court, and any other Federal Authority shall exercise, in relation to his State, such functions as may be vested in them **by or under this Act** by virtue of his Instrument of Accession, but subject always to the terms thereof and for the purposes only of the Federation.

Section 6 (4) provides that after the establishment of the Federation and the acceptance by His Majesty of an Instrument of Accession, **" the provisions of this Act** shall, in relation to the State, have effect subject to the provisions of the Instrument ".

The Ruler who accedes to the Federation thereby accepts the provisions of the Act relevant to an Indian State, but subject to the limitations contained in his Instrument of Accession, acceptable to His Majesty. The Ruler's Instrument of Accession when accepted, defines the Constitution with respect to his State.

2. The Federation is a union in the creation of which the Indian States participate.

The principle of union is recognized in the Government of India Act, 1935. Section 5 (1) provides for a proclamation declaring that " there shall be united in a Federation under the Crown, by the name of the Federation of India:

(a) the Provinces herein called Governors' Provinces,

(b) The Indian States which have acceded, or may thereafter accede, to the Federation; and, in the Federation so established, there shall be included the Provinces hereinafter called the Chief Commissioners' Provinces ".

In recognition of this principle of union, Judge Wadhams suggested and there has been included in the Government draft Instrument of Accession, the following recital:—

" for the purpose of co-operating in the furtherance of the interests and welfare of India **by uniting in a federation**

under the Crown, by the name of the Federation of India with the Provinces called Governors' Provinces, and with the Provinces called Chief Commissioners' Provinces and with the Rulers of other Indian States."

This declaration recognises the partnership of the Indian States with the Provinces in the Federation. The Federal Executive, the Federal Legislative, the Federal Court, and the other Authorities of the Federation, are their own for they are their creation as well as the creation of Parliament on behalf of the Provinces. The Rulers acceding to the Federation are not merely accepting the Federation created for them, but they are themselves, by acceding, participating in the creation of the Federation. They become members of a new political entity—a union of Federated States.

3. The Sovereignty of the Ruler continues unimpaired.

The Federation may be established only upon the requisite number of Rulers acceding to the Federation. Section 5 of the Act so provides and a recital in the Government draft Instrument declares " the said Act cannot apply to any of my territories save by virtue of my consent and concurrence signified by my accession to the Federation ".

Accession is an exercise of sovereignty by the Ruler. He neither surrenders nor transfers sovereignty by uniting with others in the creation of the Federation, nor by his declaration acceding to the Federation.

His Majesty, by an act of sovereignty, establishes the Federation; he transfers the exercise of certain sovereign functions heretofore exercised by him in relation to the Indian States and with respect to the Provinces, to the Federation, but he does not thereby surrender an iota of his sovereignty. Sovereignty is indivisible. So also, the ruler of an Indian State by joining the Federation performs an act of sovereignty, but he does not thereby surrender or transfer an iota of his sovereignty. He delegates the exercise of certain sovereign rights as defined in, and limited by, his Instrument of Accession, but his sovereignty remains unimpaired.

This principle is recognised in the recital in the preamble stating that the Instrument is made "in the exercise of my sovereignty in and over my said State", and in the first phrase of clause (6) of the Government draft declaring that " nothing in this Instrument affects the continuance of my sovereignty in and over this State ".

4. All powers not delegated to the Federation are reserved to the Ruler.

The Rulers of the Indian States possess inherent powers. The Federation, in its relation to the Indian States, possesses only transferred or delegated powers. The scheme of the Constitution provides that the Ruler by his Instrument of Accession, consents to the exercise by the Federation, in relation to his State, of certain powers. There can be no question that it was the intention of the authors of the Act that any powers, to the exercise of which by the Federation the Ruler does not consent, remain in him.

It is necessary that this fundamental principle of the relation of the Ruler to the Federation should be clearly stated in the Instrument of Accession, and that the relation of the State as a unit in the Federation should thereby be defined. It is conceivable that by reason of control of Parliament over British India, all powers not expressly given to the Provinces, may be reserved to His Majesty or the Federation. But, whatever relations Parliament may establish with respect to the Provinces, it is essential that the principle be recognized that the Federation has no power over, or with respect to, a Ruler or his State, except in the exercise of the powers expressly delegated by the Ruler to the Federation. All other powers are vested in the Ruler and are reserved to him. He is the source of all powers, and they cannot be taken from him by any legislative or executive act, but can only be bestowed by him.

The suggestion was made by Judge Wadhams that the Instrument should declare that all powers, authority and rights of the Ruler, not expressly delegated to the Federation by the Instrument of Accession, are reserved to the Ruler, and this suggestion was included in the revised draft Instrument of Accession dated 9th July 1936, which was submitted by Judge Wadhams to Parliamentary Counsel, in a Clause which read as follows :—

> " Nothing in this Instrument affects the continuance of my sovereignty in and over this State, **and** subject to the express terms of this Instrument and of any Federal Law made by this State by virtue thereof, **all powers, authority and rights in and over this state, and the exercise thereof, are reserved to the Ruler of this State ".**

In the Government of India draft Instrument of Accession, this clause has been altered to read :—

> " Nothing in this Instrument affects the **continuance** of my sovereignty in and over this State, **or** save as provided by this Instrument or by any Law of the Federal Legislature made in accordance with the terms thereof, **the exercise** of any of my powers, authority and rights in and over this State....."

The word " **and** " has been changed to the word " **or** " the reference to powers, authority and rights has been limited to " **the exercise** " thereof, and the word " **reserved** " has been omitted.

There is a vital distinction between the words " affect the exercise of powers " and the words " all powers are reserved ". Should the Federal Court be called upon to determine the question, if the word " **reserved**" is in the Instrument, its only question would be " has the power been delegated to the Federation " ? If not, then it is a power of the Ruler because all other powers are " reserved " by him. If the words " affects the exercise of powers " are used instead of " reserved ", the Court would make the enquiry " was the exercise of a power affected " ? The correct principle is that the Ruler is the source of all powers whether he is exercising them at the time or not. All powers not delegated are inherent in him—present and future. He **reserves** to himself all powers, rights and jurisdiction excepting such as it has pleased him to accede. The distinction is fundamental.

Clause 6 in the Government draft should be amended to read as suggested by your counsel.

5. The relations of Indian Rulers with the Crown are continued separate and distinct from their relations with the Federation, and without interference by Federal Authorities.

The relations of the Ruler of an Indian State with the Crown are established by Treaties, Sanads and Agreements in which the Ruler recognizes the suzerainty of His Majesty the King Emperor, and His Majesty guarantees the sovereignty of the Ruler in his State, and its territorial integrity.

As the Treaties are made with the Crown and not with the Federation, no reference to Treaties is made in the Instrument of Accession; and it is assumed that the re-affirmance of these Treaties and their guarantee will be made as in the past, by a Royal Proclamation.

(It will be observed that nowhere in the Government of India Act, 1935, does the Federation expressly undertake to guarantee the sovereignty of the Ruler and the territorial integrity of his State)

The continuance of the relations of the Rulers with the Crown is recognised in the Act by Section 2 which provides that " any powers connected with the exercise of the functions of the Crown in its relations with Indian States shall in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty's Representative for the exercise of those functions of the Crown ". and by Section 3 (2) which provides for the appointment of such Representative by His Majesty.

The principle is also recognised by Section 285 of the Act which provides :

> " Subject, in the case of a Federated State, to the provisions of the Instrument of Accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State ".

The provisions of Section 285 however do not fully cover the subject. It will be noted that the Section does not mention the rights of the Ruler, but refers only to the rights of the Crown, and the mention of the obligations of the Crown likewise does not necessarily cover all the rights of the Ruler, for the Ruler may have rights which are not connected with the obligations of the Crown towards him or his State. Section 2 refers only to powers connected with the exercise of the functions of the Crown. Neither of these Sections fully covers the underlying principle of the proposed Federation that the relations of the Rulers and the Crown shall continue separate and distinct from their relations with the Federation and without interference by Federal Authorities. For the purpose of safeguarding this principle, Judge Wadhams proposes the following clause :—

> " Nothing in this Instrument shall affect my rights and obligations in relation to the Crown with respect to any matter not

within the functions exercisable by, or on behalf of, the Federation by virtue of this Instrument, and no Federal Authority shall have jurisdiction with respect to such rights and obligations."

The proposed clause makes it clear that the Federation may not, in the administration of Federal affairs, encroach upon the rights of the Ruler. It protects the Ruler against interference by the Federation in matters covered by Treaties or other Engagements with the Crown which are not within the federal sphere. It provides affirmatively that no Federal Authority (which includes the Federal Court) has jurisdiction with respect to the rights and obligations of the Ruler outside the Federal sphere as established by his Treaties and Engagements with the Crown.

The clause proposed by your Counsel should be added to the Government draft after clause No. 2.

6. The jurisdiction of the Federation is exclusive in Federal matters.

Many functions which were heretofore carried on pursuant to Agreements between the Ruler and the Crown, are hereafter to be transferred to the Federal Authorities.

The situation presented is that the Ruler whose relations heretofore have solely been with the Crown are, in the future, to continue not only with the Crown but also with the Federation. The Instrument provides that certain matters which have heretofore been exclusively administered as arranged between the Ruler and the Crown are hereafter to be within the jurisdiction of the Federal Authorities and are, therefore, to be carried on by the Federation in its relations with the Ruler as a member of the Federation.

The Ruler should not be subject to two Authorities with respect to the same matter, that is, both to Officers of the Crown and of the Federation.

The principle of a division of rights and obligations, and of the corresponding functions in the exercise thereof, between the Crown and the Federation in their relation with Indian States, is clearly recognised in the Government of India Act, but the demarcation has been left for definition to the Instrument of Accession. Such demarcation, however, is not contained in the Government draft Instrument of Accession.

The Instrument of Accession should provide against the possibility of a double jurisdiction with respect to matters delegated to the Federation. In Section 155, page 86, of General Committee Report, it is stated "this Instrument—whatever form it may take—will, we assume, enable the powers and privileges of the Ruler in respect of those matters which he has agreed to recognize as Federal subjects, to be exercised by the Federal Authorities brought into existence by the Constitution". There cannot be two Authorities exercising jurisdiction at the same time and over the same subject matter.

In recognition of this principle, the following clause is proposed by Judge Wadhams:—

> " All functions exercisable by any Federal Authority in relation to this State by virtue of clause (1) of this Instrument, shall be exercised exclusively by a Federal Authority, except in so far as the same are exercisable by the Ruler of this State, the same may be exercised by him. "

The exception indicated is to preserve the concurrent jurisdiction of a Ruler as authorised by Section 8 (2) of the Act.

The clause proposed will establish the fundamental principle, namely, that with respect to the matters that the Ruler accedes as Federal, the authority and jurisdiction shall be exclusively that of the Federation, thereby preventing the possibility of a double jurisdiction with respect to matters delegated to the Federation. This is a complement of the preceding proposed clause in which the relations of the Ruler with His Majesty were protected from interference. In this clause it is provided that in the Federal sphere the Federal Authorities shall likewise be protected from interference in their relations with the Indian States.

The proposed clause is in conformity with the demand of the Rulers that those matters which were made Federal should be undertaken exclusively by the Federation.

The clause proposed by your counsel should be inserted after new clause No. 3 in the Government draft Instrument, and thereby avoid all possible confusion and uncertainty with respect to the authorised authority in the administration of Federal affairs.

7. In acceding to the Federation the Ruler authorizes the Authorities of the Federation to exercise the functions vested in them by the Act, subject to the terms of his Instrument of Accession.

This declaration, required by Section 6 (1) (a) of the Act, is contained in clause 1 of the Government draft.

8. The Ruler assumes the obligation of securing that due effect is given within his State to the provisions of the Act which are made applicable therein by his Instrument of Accession.

This undertaking, required by Section 6 (1) (b) of the Act, is contained in clause 2 of the Government draft.

9. The Federal Legislature has only such powers as the Ruler specifies and those as well as the exercise of the executive authority of the Federation may be limited by him.

The specification of the matters with respect to which the Federal Legislature may make laws for his State together with the limitations, required by Section 6 (2) of the Act, are contained in the first paragraph

of clause 3 of the Government draft and Schedule 1 annexed to the Instrument.

As a safeguard against other matters being implied, a paragraph which was approved by your counsel, should be added after the first paragraph as follows :—

> " The Federal Legislature shall not have power to make laws for this State save with respect to the matters so specified and subject to such limitations ".

Annexed to the Act is a Schedule of subjects concerning which the Federal Legislature is authorised to make laws (Schedule 7) and annexed to the Instrument of Accession is a " First Schedule " referred to in clause 3 of the Instrument which specifies the items in the Federal Legislative List (Schedule 7, list I) which the Ruler accepts as applicable to his State together with the limitations with respect to them.

The executive authority of the Federation is defined in Section 8 (1) of the Act which provides in reference to Federated States :—

" Subject to the provisions of this Act the executive authority of the Federation extends—

> (a) to matters with respect to which the Federal Legislature has given power to make laws.....provided that.....(ii) the said Authority does not, save as expressly provided in this Act, extend in any Federated State save to matters with respect to which the Federal Legislature has power to make laws for that State, and the exercise thereof in each State shall be subject to such limitations, if any, as may be specified in the Instrument of Accession of the State ".

In recognition of this principle limiting executive authority, there was added to the original Government draft and is now included in the Government draft as a second paragraph in clause 3, the following :—

> " Where under the First Schedule hereto the power of the Federal Legislature to make laws for this State with respect to any matters specified in that Schedule, is subject to a limitation, the executive authority of the Federation shall not be exercisable in this State with respect to that matter otherwise than in accordance with, and subject to, that limitation."

With respect to the items in the Federal Legislative List, although the Ruler may specify those which are accepted by him, his selection must be such as is acceptable to His Majesty. The items specified as accepted should be the same in all Instruments of Accession. A certain uniform body of Legislative power is requisite to enable the Federation to function for India and as stated at page 87 of Vol.1. (Part 1) of the Report of the Joint Committee "we think that the lists of subjects accepted as Federal by Rulers willing to accede to the Federation, ought to differ from one another as little as possible".

To further this uniformity, it is suggested that the limitations of the items specified in the First Schedule of the Instrument should be divided into four kinds :—

(i) **General limitations such as** :—

(a) with respect to eminent domain, and

(b) providing for the observance of State laws by Federal Agents.

(ii) **Limitations of the subject matter** of any item specified either :—

(a) by way of definition, or

(b) by exclusion of certain parts of the item.

These kinds of limitations, enumerated, as (i) and (ii) above, should also be uniform in all Instruments of Accession.

As stated in the report above quoted :

" It would , in our opinion— be very unfortunate if the Court found itself compelled in any case to base its decision upon some expression or phraseology peculiar to the Instrument under review and not found in other Instruments ".

(iii) **Reservations** :

This is not, strictly speaking, a limitation, but the exception from items accepted in the Federal List, of jurisdiction over certain matters which are now recognized as exclusively belonging to the State. Such matters are recognized as exceptional in the Report above quoted as follows :

" A Ruler who desires in his own case to except or reserve subjects which appear in what we may perhaps describe as the Standard List of Federal subjects in relation to the States, ought to be invited to justify the exception or reservation before his accession is accepted by the Crown. We do not doubt that there are States which will be able to make out a good case for the exception or reservation of certain subjects, some by reason of existing Treaty rights, others because they have long enjoyed special privileges (as for example in connection with postal arrangements, and even currency or coinage) in matters which will henceforward be the concern of the Federation ; but in our judgment it is important that deviations from the Standard list should be regarded in all cases as exceptional and not be admitted as of course ".

(iv) **The limitation of executive authority by undertaking the administration of a matter concerning which the Federal Legislature has made a law applicable in the State.**

This may arise either :—

(a) By limitation of the exercise of executive authority pursuant to Sec. 6 (2) of the Act, or

(b) By the entrusting, by the Governor General, of functions in relation to a matter to which the executive authority of the Federation extends pursuant to Sec. 124 of the Act, or

(c) By an administrative agreement between the Governor General and the Ruler pursuant to Sec. 125 of the Act.

The kinds of reservations and limitations enumerated as (iii) and (iv) are of necessity not subject to uniformity as they are essentially different in different States, and will have to be considered by the States individually, and determined by agreement with the Government.

10. States which pay contributions or enjoy immunities and privileges will balance their accounts furnishing the necessary details.

The declaration to give effect to this provision, required by Sections 147 and 149 of the Act, is contained in clause 4 of the Government draft.

11. Under circumstances provided in the Act, Ordinances may be promulgated, Acts enacted and laws made by the Governor General in lieu of laws of the Federal Legislature.

It was undoubtedly the intention of the framers of the Act that such Ordinances, Acts and laws should be subject to the same limitations as Laws enacted by the Federal Legislature.

In recognition of this intent, there was added to the original Government draft and is now included in the Government draft Instrument, the following clause :—

" 5. References in this Instrument to laws of the Federal Legislature include references to Ordinances promulgated, Acts, enacted and Laws made by the Governor General of India under Sections 42 to 45 of the Act, inclusive "

12. Parliament has no jurisdiction over the Ruler of an Indian State or over his State.

By Section 6 (5) of the Act, the Ruler acceding is required to consent to the amendment of the Act in so far as it affects British India ; by Section 45 (4) Parliament is authorized to make laws in case of the breakdown of the Federation : by Section 6 (9) the Instrument of Accession is to be laid before Parliament and that pursuant to Section 5 the Federation is to be established only after each House of Parliament has presented an address in that behalf to His Majesty, and in the Government draft Instrument there are recitals :

" And whereas those proposals contemplated that the Federation of India should be constituted by an Act of Parliament of

the United Kingdom, and by the accession of Indian States, and whereas provision for the constitution of a Federation of India has now been made in the Government of India Act, 1935".

It was not, however, the intention of the framers of the Act that the Ruler or his State by acceding to Federation should submit to, or be brought within the jurisdiction of, the Parliament in any respect.

In recognition of this principle, Judge Wadhams suggested and there has been included in the Government draft, the following clause :—

"7 Nothing in this Instrument shall be construed as authorising Parliament to legislate for, or exercise jurisdiction over, this State or its Ruler in any respect."

13. **The Ruler consents that Parliament may amend the Act with reference to the provisions which concern British India, but no amendment shall, unless it is accepted by the Ruler, extend the functions of His Majesty or any Federal Authority in relation to his State.**

This consent, required by Sec. 6 (5) of the Act, is contained in the second paragraph of clause 7 of the Government draft Instrument.

14. **Agreements for administration by the Ruler of Federal Laws may be made after the establishment of the Federation, and if provision has been made therefor in the Instrument of Accession, shall be made between the Governor General and the Ruler.**

Provision of such agreement, pursuant to Section 125 of the Act, is contained in clause "A" of the Government draft Instrument for use in proper cases.

The administration agreement may not be demanded as a right granted by the Act, but provision therefore will have to be made by arrangement with the Government.

15. **Rulers who do not desire that disputes concerning the water supplies should be determined as provided in the Act, may declare such provisions inapplicable to their States.**

This provision, authorised by Section 134 of the Act, is contained in clause "B" of the Government draft Instrument.

16. **His Majesty may exclude areas in Indian States from the jurisdiction of executive authority and legislative powers of the Federation but in such a case is to give notice before the execution by the Ruler of his Instrument of Accession.**

This, provision, authorized by Section 294 (i) of the Act, is contained in clause "C" of the Government draft Instrument.

17. **The extra territorial rights of a Ruler may be safeguarded by the Governor General.**

There is an **additional clause** appropriate for use in a few States which was approved by your counsel, and which should be added to the **"Additional Paragraphs for insertion in proper cases"** of the Government draft, as follows :—

> "D. Nothing in this Instrument is intended or shall be deemed to affect the rights set forth in the Fourth Schedule hereto annexed."

The purpose of this clause is to provide a Schedule in which the Ruler may by reservation protect any rights which he enjoys outside his State. It would only apply to such States as now enjoy by either agreement or practice a privilege or right which could not be reserved by the limitations set forth in the First Schedule annexed to the Instrument which applies only to laws for the State. The statement of such extra-territorial rights in the Fourth Schedule would be of value to the Governor General in preventing Federal Legislation which would interfere with such an existing right now enjoyed by the Ruler outside the boundaries of his State i.e. a right to free stamps. The clause is for protection in case of a law not enacted for the Ruler's State but which, although not applying therein, may affect rights he now enjoys outside his State.

18. **The jurisdiction of the Federal Court does not extend to non-federal matters.**

As it is proposed that all matters now contained in Treaties, Sanads or Agreements, which are within the Federal sphere, such as coinage, post office, rail roads etc., but which the Ruler reserves, are to be stated in the Schedules annexed to his Instruments, the remaining relations with the Crown, contained in Treaties, Sanads or Agreements, will remain outside the Federal sphere and, therefore, are not properly subjects within the jurisdiction of the Federal Court.

For the purpose of safeguarding this principle, Judge Wadhams proposes the following clauses:

> "Nothing in this Instrument shall be construed as conferring on the Federal Court, or any other Federal Authority, jurisdiction to determine the validity, effect or interpretation of any Treaty, Sanad, Grant or other Engagement between this State and the Crown provided that the foregoing provisions ot this Section do not apply to this Instrument or any Supplementary Instrument of Accession executed by the Ruler of this State, or to such Agreements as are mentioned in Section 204 (1) (a) of the Act."

Upon the adoption by the Government of the clause proposed by your counsel in paragraph 5 on page 8 of this Report, the foregoing, although desirable, would not be essential, as the Federal Court is included in the words "no Federal Authority" therein contained.

19. **The Government draft Instrument further provides** by clause 8 that the Schedules annexed to the Instrument shall form an integral part of the Instrument; by clause 9 that the Instrument shall

be binding when accepted by His Majesty, but shall be void if the Federation is not established before a given date ; and by clause 10 that the Ruler executes the Instrument for himself, his heirs and successors, and that reference to the Ruler includes them.

20. These clauses, **with the amendment and the additional clauses suggested** , are approved as constituting suitable general clauses for a standard form of the Instrument of Accession.

21. **Other clauses considered.**

During the Conferences in London other clauses were discussed, some of which are considered by your counsel as desirable, but which were not included in the Government draft Instrument.

(a) Some of these clauses were considered to be sufficiently **covered by the Act itself.** The following are examples of such clauses :—

i. " No financial obligation shall be laid upon this State and no law shall be passed by the Federal Legislature imposing any direct or indirect taxation in or upon this State other than as expressly authorized by this Instrument of Accession " .

This Clause appeared to be sufficiently covered by clause 3 of the Government draft Instrument in view of the additional paragraph suggested and in view of Section 101 of the Act.

ii. "The distribute share of this State of the net proceeds of any taxes and duties collected by the Federation and assigned for distribution shall be equivalent to the proportion of the sum collected in this State to the entire sum collected in the Federation. "

It was considered preferable to leave to the Federal Legislature the determination of the principles of distribution as provided in Sections 137 and 140 of the Act.

(b) Other clauses discussed were considered **inappropriate to the conditions** prevailing in India. The following are examples of such clauses :

i. " All (customs) duties, taxes and excises levied by the Federation pursuant to any law applicable in this State shall be uniform throughout the Federation.

ii. " No preference shall be given by any regulation of commerce or revenue to the ports of one unit of the Federation over those of another, nor shall vessels bound to, or from, one unit, be obliged to enter, clear, or pay duties in another. "

iii. " The subjects of this State shall be entitled to all privileges and immunities of subjects in the other units of the Federation."

These clauses appeared to be inappropriate because due to different development and conditions in the several units of the Federation, uniformity was not considered possible in these respects.

(c) Other clauses were considered sufficiently **covered by understandings and circumstances.** The following is an example of such a clause :—

> " Federal revenues collected in this State, or contributions in lieu thereof, shall not be used or applied to the payment of any pensions, or the public debt, or the interest thereon, incurred in British India or any part thereof, before the establishment of the Federation, or for any grant, subsidy or other payment exclusively for British India or any part thereof "

This clause was not considered necessary because it was understood that Federal income tax would be levied in the Provinces and not in the Federated States, and that Section 139 of the Act provided that the Corporation tax shall not be levied in any Federated State until ten years after the establishment of the Federation. The estimated net revenue from income tax and Corporation tax being 13.6 crores of rupees, and the annual grants to Provinces recommended in the Indian Financial Enquiry Report by Sir Otto Niemeyer being only 3 crores of rupees, it was considered unnecessary, under the circumstances, to prohibit the use of taxes collected in the Federated States to the above purposes.

(d) Other clauses, after further consideration were deemed **unnecessary.** An example of such a clause is :—

> " The executive authority of the Federation, save as the said authority is exercisable by the Governor General in his discretion shall extend, and be operative, in this State only as to matters with respect to which the Federal Legislature has power to make laws for this State. "

This clause had reference to Section 8 (1) (ii) of the Act which was the subject of serious discussion. By that Section the executive authority of the Federation extends to Federated States only with respect to Federal laws applicable in the State by virtue of its Instrument of Accession " save as expressly provided in this Act. "

Your Counsel addressed an inquiry in writing to the Political Secretary to the Government of India on this point, which was referred to Parliamentary Counsel in London and resulted in a careful examination of the Act to discover what express provision for executive authority of the Federation in Indian States, other than with respect to Legislative matters, is contained in the Act. This examination disclosed that the Governor General is given executive authority with respect to the disputes concerning water supplies by Sections 130 to 133, and if called upon by the Representatives of the Crown, he must furnish armed forces, by Section 186. All of these matters are not necessarily connected with Federal Legislation and they are all to be exercised in his discretion.

As none of the express provisions of executive authority, discoverable in the Act, were disadvantageous to the Ruler of an Indian State, upon mature deliberation the clause was considered unnecessary.

The India Office's counsel indicated that no clause concerning secession should be considered as the provisions of the Act as to breakdown (Section 45) and as to unacceptable amendments [Sections 6 (5)] sufficiently covered the circumstances under which a Federated State would cease to be a member of the Federation. Further discussion of the many clauses considered is unnecessary to indicate the careful and full consideration given by your counsel to all the safeguards demanded by the Chamber of Princes, and to many additional proposals suggested in the interests of its members by your counsel.

B. **Other provisions recommended.**

A number of safeguards proposed by your counsel in the interest of Indian Rulers, although they may not be appropriately included in the Instrument of Accession should be otherwise provided for.

In my "Report to the Chamber of Princes, No. 10", I included a memorandum transmitted by me to Parliamentary Counsel with the request that the India Office should forward the same to the Government of India, in which it is noted that certain proposals made in the interest of the Rulers should be provided for by Royal Proclamation, in the Instrument of Instructions or by amendment of the Act.

I. **Royal Proclamation.**

The maintenance of the privileges, rights and dignities of the Ruler and existing Treaties, Sanads and Engagements with His Majesty the King Emperor will be re-affirmed by an appropriate ROYAL PROCLAMATION.

As it was not considered appropriate to refer in the Instrument of Accession to existing Treaties, Sanads and Engagements with His Majesty, these being relations with the Crown and not with the Federation, they are not mentioned in the Instrument of Accession. But as these relations with His Majesty the King Emperor were to continue, it is highly desirable that they should be re-affirmed and the method most appropriate, and in accordance with precedent, was that suggested, namely a Royal Proclamation.

As, however, the subject matter of many Treaties, Sanads and Engagements falls within the Federal sphere, it is proposed that in the First and Fourth Schedules all such subject matter shall be restated *de novo* and *in toto*. By this means, the obligations of the Federation with respect to such subject matter will be clearly defined and on the other hand the relations of the Ruler with His Majesty will be re-affirmed by the Royal Proclamation.

II. **Instrument of Instructions.**

By Section 13 (1) of the Act it is provided that the Secretary of State shall lay before Parliament an Instrument of Instructions

which it is proposed to recommend to His Majesty to issue to the Governor General.

The following suggestions are made as to clauses in the Instrument of Instructions:—

1. **When surcharges may be imposed.**

"No surcharge shall be imposed, nor shall any duties, taxes or excise be increased, by any surcharge for Federal purposes, nor equivalent contribution assessed in this State during the first ten years after the establishment of the Federation, unless the Governor General shall by proclamation declare that a state of emergency exists after all economies proposed by him had been effected, the resources of indirect taxation open to the Federation exhausted, and all return of Income Tax to the Provinces suspended."

The important question as to the time when surcharges may be imposed by the Federal Legislature upon Indian States is, by the Government of India Act Section 141(2) to be determined by the Governor General. As, however, the conditions set forth in that section do not fulfill all the requirements of the Hydari Memorandum, it is suggested that the Instrument of Instructions should contain a direction to the Governor General that he shall not give his sanction pursuant to Section 141 (1) to the introduction of any Bill imposing any Federal surcharge applicable in any Indian State until, in addition to provisions in Section 141 (2) of the Act, the conditions mentioned in the Hydari Memorandum and contained in the above clause have been fulfilled.

2. Instructing the Governor General to make rules prohibiting discussions in the Federal Legislature on matters connected with an Indian State, or asking questions concerning the personal conduct of the Ruler.

"The Governor General shall in his discretion, after consultation with the President of the Council of State and the Speaker of the Federal Assembly, make rules prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has power to make laws for that State, and prohibiting the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State, or of a Member of the ruling family thereof. [See Sections 38 (1) (c) and 38 (1) (d) (IV) of the Act.]

The same instructions should be given to the Governors of Provinces. [See Sections 84 (1) (c) and 84 (1) (d) (iii)]".

3. **The preservation of the privileges and immunities now enjoyed by the Rulers.**

"The existing rights, privileges and immunities of the Rulers of Federated States established by the British Indian Civil or

Criminal Codes; or other laws, regulations or practice, shall be continued in full force and effect and no Act of the Federal Legislature, or any other Federal Authority, shall limit the same."

The Rulers of Indian States now enjoy certain privileges and immunities under British Indian Civil and Criminal Codes, and other laws and regulations of the Government of India. It is a matter of importance to the Indian Rulers that when the present Government of India ceases to exist and its functions are taken over by the Federation, these privileges and immunities of the Rulers should not be jeopardized. [See Sections 86 and 133, Code of Civil Procedure 1908 (1) and Chapter 28 of Act 10 of 1877 (Criminal Matters)].

As one of the "special responsibilities" of the Govenor General is the protection of the rights and dignity of the Ruler of an Indian State [Section 12 (1) (g)], it is suggested that a direction to the Govenor General in the Instrument of Instructions is appropriate as a safeguard of the privileges and immunities now enjoyed by the Rulers of Indian States.

4. **With respect to directions to a Ruler.**

"Whenever the Governor General may, pursuant to the Government of India Act 1935, give directions to the Ruler of an Indian State, such directions shall be given in the form of requests."

5. **Protection of economic life of Federated State.**

" The Governor General is charged to see that the economic life of a Federated State is not imperilled or prejudiced by any Legislation proposed in the Legislatures of any Province of the Federation."

6. **Governor General to confer with Ruler with respect to orders and rules made pursuant to schedule one Part II of the Act.**

" Before any order, rule or regulation authorized by Schedule One Part II of the Act is promulgated or made the Governor General shall consult the Ruler of the State affected thereby with respect to the same."

Schedule 1, part II, Section 14 provides that the Governor General may make Rules with respect to the times at which and the manner in which appointments are to be made to carry into effect the provisions of Part II with respect to appointments to the Federal Legislature. The suggested clause will assure that such rules are made after consultation with the Ruler concerned.

7. **Special responsibilities of the Governor General in the prevention of any grave menace to the peace and tranquility of India if exercised in relation to a Federated State, to be exercised**

after consultation with the Ruler and on request of His Majesty's Representative.

" In the exercise of his functions, the special responsibilities of the Governor General designated in Section 12 (1) (a) of the Act shall, in relation to a Federated State, be undertaken only after consultation with the Ruler of that State, and on request of His Majesty's representative for the exercise of the functions of the Crown in its relations with Indian States."

The special responsibility of the Governor General provided in Section 12 (1) (a) of the Act is " the Prevention of any grave menace to the peace or tranquility of India or any part thereof. " The preservation of order in his State is first a responsibility of the Ruler of the State and it is further an obligation of the Crown under Treaties and Sanads. The powers connected with the exercise of the functions of the Crown, in its relations with Indian States, shall in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty 's Representative for the exercise of these functions of the Crown as provided in Section 2 (1) of the Act.

The proposed instruction is, therefore, consistent with the scheme of the Act.

III. **Amendments to the Act.**

No amendments to the Act, which would change the scheme embodied in the Act, would be entertained. There are however, certain omissions in the provisions not only with respect to Federated States but also with respect to the Provinces which it may be desirable to cure by amendments. The following amendments are suggested as being within such class of minor amendments which do not alter the scheme, but are intended to safeguard the interests of the Rulers of Indian States.

1. **As to appointment of Representatives in the Federal Legislature and filling vacancies.**

Add to Section 18 (3) of the Act, the following :—

" (a) The representatives of Indian States in the Council of State and in the Federal Legislature shall be appointed by the Ruler or Rulers of the States entitled to representatives and may be nominated in such manner as the Ruler or Rulers may prescribe. Any vacancy due to death, resignation or other cause, shall be filled by the Ruler or Rulers entitled to make appointment."

Section 18 (3) provides that representatives (of the Federal Legislature) " shall be chosen in accordance with the provisions in that behalf, contained in the First Schedule to this Act. " It may be inferred in Part 2 of the First Schedule of the Act that appointments are to be made to the Council of State and to the Federal Assembly by the Ruler, but the filling of vacancies is not clearly provided for. In sub-section 14 (b) it is provided " in so far as provision in that behalf is not made by His Majesty in Council, the Governor General may, in his discretion, make rules..with respect to the filling of casual vacancies and seats. "

As the Rulers are to make the original appointments, it follows that they should also appoint to fill a vacancy. The omission of a definite provision appears to have been an oversight in the drafting of the Act and it is proposed to correct this omission by an appropriate amendment providing that the Rulers shall not only make the original appointments but also appoint those who are to fill vacancies.

2. **As to eligibility for office.**

Add to Section 298 (1) of the Act the following :—

(a) " No subject of the Ruler of a Federated State shall, on grounds only of religion, place or birth, descent, colour or any of them, be eligible for office under the Federation."

3. **As to sanction by the Governor General of Legislation with respect to taxation.**

In Section 141 (1) of the Act, strike out the words " Provinces are " in the second line, and insert in place thereof the words " Any Province or Federated State is. "

The Section will then read as follows :—

" No Bill or Amendment which imposes or varies any tax or duty, in which any Province or **Federated State** is interested.....shall be introduced, or moved, in either Chamber of the Federal Legislature, except with the previous sanction of the Governor General in his discretion. "

4. **As to advisory opinion of the Federal Court.**

Add to Section 213 (1) of the Act, the following :—

(a) " When a Ruler of a Federated State requests the Governor General to refer such a question to the Federal Court for an opinion, he shall refer the question to the Federal Court, and shall, upon receiving its Report, transmit the same to the Ruler.

5. **As to broadcasting.**

In Section 129 (1) of the Act, following the words :—

" Provided that nothing in this subsection shall be construed" add the words.

" As prohibiting the Ruler of a Federated State from constructing, or using, or authorising construction, or use, in his State, in conformity with international regulations made by the Federation, applicable to all Provinces and Federated States, of wireless stations, transmitters and receivers of other apparatus for sending and receiving communications by air, or ".

Section 129 (1) provides "the Federal Government shall not unreasonably refuse to entrust to the Government of any province, or the Ruler of any Federated State, such functions with respect to broadcasting as may be necessary to enable the Government or Ruler to construct and use transmitters in the Province or the State etc. The implication is that unless the Federal Government does so entrust the Ruler, he has no right to construct or use broadcasting apparatus in his State. As the Ruler may not be deprived of any right by Act of Parliament the proposed amendment is suggested to prevent such legal implication of the Act.

6. **As to the Federal Legislature's power to confer powers and impose duties on a State or its Officers.**

Amend Section 124 (3) of the Act to read :—

" **If functions in relation to any matter have been entrusted to a Ruler or his Officers, as provided in sub-section (1) of this Section**, an Act of the Federal Legislature, which extends to a Federated State, may confer powers and impose duties, **with respect to such functions** upon the State or Officers and authorities thereof to be designated for the purpose by the Ruler. "

Note. The words in thick type are added.

Section 124 (3) as drawn confers the powers on the Federal Legislature to impose duties on a Ruler without his consent, but was probably intended to be operative only when powers had been entrusted under Section 124 (1) as provided in the proposed amendments.

7. **As to the power of the Federation to assume exclusive executive authority by Legislative Act with respect to a Federal Law applicable in a Federated State.**

Amend Section 8 (2) of the Act by adding :—

" Nothing in this sub-section shall be construed as authorizing the executive authority of the Federation to become exercisable in a Federated State to the exclusion of the Executive Authority of the Ruler by virtue of a Federal law, with repsect to a matter concerning which the Ruler has reserved the administration in his Instrument of Accession. "

The foregoing Report was drafted before attending the meeting of Ministers and I have delayed mailing the same for the purpose of adding any new suggestions concerning the Instrument of Accession and the Instrument of Instructions which would be of value to the Chamber of Princes. None were made which had not already been noted by your Counsel in this Report.

The work entrusted to me by the Chamber of Princes has been concluded. The work remaining to be done concerns individual Rulers with respect to their Individual Instruments and the Schedules thereto annexed which was not included in the terms of my appointment.

WILLIAM H. WADHAMS,
Legal Adviser to the Chamber of Princes.

MEMORANDUM SUBMITTED BY JUDGE WADHAMS CONCERNING HIS SERVICES FOR THE CHAMBER OF PRINCES.

(30th September, 1936).

Pursuant to the instructions contained in my appointment as legal adviser to the Chamber of Princes, I sailed from Bombay on March 5th, 1936, and proceeded to London. Upon my arrival in London on March 25th, I immediately reported to the India Office and had my appearance as Counsel for the Chamber of Princes noted. Through the courtesy of the Acting High Commissioner, Mr. Rama Rao, I was provided with an office in India House. I was received most cordially by Lord Zetland, Secretary of State for India, and immediately put in touch with Sir Maurice Gwyer, First Parliamentary Secretary in charge for the India Office of drafting the Instrument of Accession. I was advised that only the general clauses, which it was proposed should be applicable to all the Major Indian States would be discussed and that subsequently matters relating to particular States would be taken up by the Government of India with the several Rulers in India. I was advised that it would be impossible for Sir Maurice Gwyer to consult with a large number of Counsel and therefore the India Office has determined that the informal consultations should take place with myself, representing the Chamber of Princes, with Gavin T. Simonds K. C., representing His Highness of Bikaner and Walter T. Monckton, K. C., representing the Nizam of Hyderabad. It was further suggested that before proceeding with the consultations with Sir Maurice, I should first confer with Simonds and Monckton for the purpose, if possible, of agreeing upon proposals.

I was furnished by Sir Maurice with the Government preliminary draft Instrument.

I thereupon requested Sir Maurice Gwyer and Mr. Simonds and Mr. Monckton to furnish me with their proposed draft Instruments of Accession, with which request they courteously complied.

As these drafts furnished me by the India Office and by Counsel for the Indian Rulers, in my opinion, were inadequate, I thereupon conferred further with Sir Maurice Gwyer and with Counsel for Bikaner and Hyderabad

On March 31st, Sirdar K.M. Panikkar, Foreign Minister of Patiala, arrived in London and thereafter I was in daily conference with him.

On April 9th, the work in London was interrupted by the Easter vacation, and I left for Paris, taking with me the proposed drafts which had been submitted for my consideration.

On April 16th, the work was resumed in London and upon the arrival of Sirdar D. K. Sen, Chief Minister of the Mandi State, the conferences with him and Mr. Panikkar were continued.

My efforts at this time were particularly directed to presenting to my associate Counsel the necessity of including in the Instrument of

Accession all the safeguards requisite to protect the Indian Rulers in a Federation, especially in view of the difference between an unwritten and a written constitution.

To further this work with associate Counsel, I prepared a draft form of an Instrument of Accession and a voluminous memorandum on the form and content of the general clauses of the Instrument of Accession and also a memorandum concerning the Seventh Schedule of the Government of India Act for the purpose of differentiating between matters which should be included in the general clauses and matters which should be included in the Schedules pertaining to particular States, which will be annexed to the general form. I also prepared a further memorandum in which I showed the sources and the legal grounds for the various suggestions made by me.

In additon to my conferences with Mr. Simonds and Mr. Monckton I also conferred with Dr. Columbos, Junior to Mr. Simonds and with Mr. Polak, his Solicitor, and also with Mr. Fachiri, Junior to Mr. Monckton and with Mr. Brunyate, his Solicitor, as well as exchanging memoranda and correspondence. I was prepared at all times to confer with any Counsel in the interest of the Chamber.

On May 9th the work in London was again interrupted by the so-called leakage enquiry, Mr. Gavin Simonds having been appointed a Judge of the Tribunal and Mr. Monckton being briefed in the case.

I thereupon went to Paris, returning to London on May 14th. I continued my conferences with associate Counsel and also discussed various aspects of Federation with Mr. Patrick, Political Secretary of the India Office and with Sir Reginald Glancy, also of the India Office.

On May 15th Mr. Panikkar left for India and I continued my daily conferences with Mr. Sen until his departure.

On May 29th the work in London was again interrupted by the Whitsuntide or spring vacation, when all the Counsel left London, the Temple being closed.

On returning to London on June 11th, I prepared for Mr. Simonds a letter containing particular points which in my opinion should be covered by the Instrument of Accession.

As Associate Counsel were of opinion that their draft forms were adequate, I prepared a "Comparison," being a table showing that their drafts and that of Sir Maurice were practically indentical with the White Paper Draft submitted in March 1935 and which the Indian Rulers had found unsatisfactory.

I also delivered to Associate Counsel an "Additional Memorandum" showing that their drafts contained only the statutory provisions of the Act and setting forth at length my views as to the proper form and requisite provisions which the Instrument should contain. It was then agreed that I should procceed to consult with Mr. Maurice Gwyer and make such proposals as I deemed advisable.

Upon my calling on Sir Maurice he expressed his appreciation of the importance of my suggestions and requested me to submit my proposals in writing.

Eleven proposals together with a memorandum on each and my suggestions as to the form of the Instrument of Accession and the clauses which it should contain were submitted by me to Sir Maurcie.

These suggestions were discussed by me with Sir Maurice in several conferences, one of them lasting four consecutive hours.

I also wrote Mr. Monckton an analysis of points of difference and points of agreement.

Thereafter I conferred further with Mr. Monckton and his associates and prepared a revised draft—which after further discussions was made the basis of a joint draft and transmitted by me to Sir Maurice together with a letter discussing the disposition of the several clauses proposed by me and a memorandum by Mr. Monckton.

After further conference with Associate Counsel, Mr. Monckton and I had an informal conference with Sir Maurcie concerning the joint draft Instrument submitted by us, at which all the proposals made by me (with the exception of two) were finally approved and provided for either as clauses in the Instrument of Accession or by other appropriate methods.

Subsequently Mr. Monckton prepared a joint memorandum which was presented by Mr. Fachiri and myself (Mr Fachiri is Mr. Monckton's junior) to Sir Maurice Gwyer.

Having been informed that the India Office, upon the urgent request of the Government of India, had decided to transmit the Draft Instrument of Accession to Simla, Counsel were advised that no further consultations would be held in London. In a final meeting with Sir Maurice Gwyer, I was advised that the draft Instrument forwarded to India contained the main proposals urged by me and that it was in the form which I had proposed.

To emphasize the importance of the proposals I had made in the interest of the Chamber, I had a very satisfactory conference with Lord Zetland, outlining our point of view and presenting him with a short memorandum on specific points and the importance of including in the Instrument of Accession the assurances which I had urged on behalf of the Rulers.

Lord Zetland assured me after reading the Memorandum that my proposals would have his most careful consideration.

I prepared and transmitted a Revised Draft Instrument of Accession (July 17, 1936) in the form discussed at the last conference with Sir Maurice Gwyer and also a Memorandum with respect to this draft and sent them to Sir Maurice with a request that the India Office forward them to the Government of India.

Copies of these documents were transmitted with my Report No. 10 to the Chamber of Princes.

On August 12th, I also prepared a "Memorandum by judge Wadhams concerning Draft of General Clauses of Instrument of Accession submitted to India Office for transmission to the Government of India."

I left London on July 21st, for Paris where I was in touch by telephone with the India Office and with Mr. Monckton's Chambers.

The Government draft Instrument of Accession was released by the Government of India for circulation to the Indian Rulers on August 14th, and a copy was furnished to me by the India Office. On an examination of this Instrument of Accession I advised the Chamber of Princes that the draft was incomplete. On August 25th, in Report No. 11, I advised His Highness the Chancellor that I was proceeding to India, and I sailed from Genoa on September 3rd, 1936, arriving in Bombay on September 14th.

In the course of my work I sent to the Chamber of Princes 12 Reports concerning the work, and in addition 6 letters and 4 cables to the Acting Chancellor. In addition, I prepared 8 Working Memoranda for Associate Counsel with respect to the Preamble and form of the Instrument and the Clauses under consideration. I also prepared and transmitted to Parliamentary Counsel for the India Office :—

1. An outline of my suggestions as to what the uniform Instrument should contain.
2. Suggestions for the form of Preamble.
3. Recitals for consideration.
4. An alternative form of recital together with the Memorandum concerning these suggestions.

I also prepared and submitted to the India Office 9 proposed clauses for the Instrument of Accession together with a Memorandum explaining the same, attached to each.

In my final Report dated 15th, September, 1936, submitted to the Chamber of Princes, I have analysed the principles underlying the Constitution of the Federation, with particular reference to the Instrument of Accession, discussed the Government draft and the amendment, and additional clauses which in my opinion should be added to the Government draft for the protection of the interests of the Indian Rulers together with other Clauses considered and also my suggestion concerning the Royal Proclamation, the Instrument of Accession and the amendments to the Act.

Wm. H. Wadhams.

MEMORANDUM BY JUDGE WADHAMS CONCERNING DRAFT OF GENERAL CLAUSES OF INSTRUMENT OF ACCESSION SUBMITTED TO INDIA OFFICE FOR TRANSMISSION TO THE GOVERNMENT OF INDIA.

(August 12, 1936)

A draft of the general clauses of the Instrument of Accession dated July 17th, 1936, together with a Memorandum thereon, were on July 18th,

delivered to Sir Maurice Gwyer, Parliamentary Cc [uest
that they be transmitted to the Government of India.

The draft submitted contains only the general clauses of the Instrument of Accession constituting a standard form applicable to all the Major States. To this standard form of general clauses schedules will be annexed containing special provisions applicable to individual States.

At present we are concerned only with the form of the Instrument and the general clauses it contains.

The Instrument of Accession is a Constitutional document.

In the establishment of other Federations, no declarations were appropriate, no conditions were possible. The units became members of the Federation by the mere act of joining. In such Federations the Constitution was complete in a predetermined document.

The Constitution of the Federation of India is contained in an Act of Parliament, but this Act is not the whole Constitution with respect to Indian States. Parliament cannot enact a Constitution for them This is clearly recognized for the Ruler of an Indian State is under no compulsion, but, if he so determines, he may join the proposed Federation and accept the Constitution upon the terms contained in his Instrument of Accession, acceptable to His Majesty. The Ruler's Instrument of Accession when accepted, becomes a part of the Constitution with respect to his State. It is the Constitution of his State in its relation to the Federation.

The Instrument of Accession is in effect, though not in form, a Treaty which to become effective must be accepted by His Majesty the King Emperor : but is more than a Treaty, for it is the Instrument whereby the Ruler joins in creating and becomes a member of a new political entity, the Federation to which he accedes. The document is therefore appropriately termed an Instrument of Accession.

The Instrument of Accession is a declaration of the terms upon which the Ruler of an Indian State accedes to the Federation of India, to be constituted as provided in the Government of India Act, 1935. It is the warrant of authority by which the Ruler delegates to the Federation the exercise of certain defined and limited powers.

The Instrument of Accession is an Act of sovereignty.

The draft submitted has been drawn in the form of a declaration by the Ruler of an Indian State in his capacity as Sovereign of that State.

The Instrument begins with an historical recital describing the conditions which led up to the contemplated organization of the Federation and the method by which it may be established.

The first " WHEREAS " indicates that the Federation was not imposed upon either the British Provinces or the Indian States, but that the proposal for its establishment was discussed between representatives of His Majesty's Government, of the Parliament of the United Kingdom, of

British India and of the Rulers of the Indian States. The Rulers of the Indian States are thereby recognized as having taken part in originating the idea of Federation.

The second " WHEREAS " states that the contemplated Federation should be constituted by an Act of Parliament and by the accession of Indian States. This recital indicates that not only an Act of Parliament, but also the sovereign act of accession by the Rulers of Indian States is requisite to the establishment of the Federation.

The third " WHEREAS " recites that Parliament has approved the proposal and provided for a Constitution in the Government of India Act 1935, but that the Federation shall only come into existence on such date as His Majesty may by proclamation declare, and not until the requisite number of Indian States have acceded to the Federation.

The fourth " WHEREAS " recites that the Act of Parliament cannot apply to any of the territories of an Indian Ruler save by virtue of his consent and concurrence signified by his accession to the Federation.

Then follows the Instrument proper consisting of a preamble and clauses.

The PREAMBLE begins by the recognition of the principle laid down that the Instrument of Accession is an Act of sovereignty. The first clause in the preamble declares that the Instrument of Accession is made " in the exercise of my sovereignty in and over my said State. "

The second clause of the Preamble is a statement of the purpose of the Ruler in acceding to the Federation, namely " of co-operating in the furtherance of the interest and welfare of India ". Then follows a declaration as to the method by which such co-operation is made effective, namely " by uniting in a Federation under the Crown by the name of the Federation of India with the Provinces called Governor's Provinces and with the Provinces called Chief Commissioner's Provinces and with the Rulers of other Indian States."

This is a vital recital. It is in conformity with Section 5 of the Act. Under this section His Majesty is by proclamation to declare the union in a Federation under the Crown by the name of Federation of India, of the British Provinces and the Indian States which have acceded to Federation.

One of the essential safeguards demanded by the Rulers of Indian States was that they were to be partners in the undertaking, that they were to associate or unite with British India. This recital is an expression of that association, it appropriately sets forth the part which the Ruler is taking in the establishment of Federation.

The Rulers of Indian States do not accede to an existing Federation, they participate in its creation. Parliament can include the British Provinces, but unless the requisite number of Rulers of Indian States join the Federation, the condition precedent to its establishment is not fulfilled. This recital makes it quite clear that the Federation is not merely

the creation of Parliament, but it is also the Rulers' Federation, their Federal Legislature, their Federal Executive, their Federal Court, because they have associated themselves, they have united with the British Provinces and with other Indian Rulers in its creation.

The CLAUSES of the Instrument of Accession follow :

There are a number of clauses which under the Act, must be included in the Instrument of Accession. They may be termed the statutory clauses.

Clause 1 is a statutory clause required by Section 6 (1) a. In this clause the Ruler declares that he aceedes to the Federation with the intent that various authorities of the Federation, His Majesty the King, the Governor General of India, the Federal Legislature and the Federal Court shall exercise in relation to his State such functions as may be vested in them by or under the Government of India Act, with however this important proviso " by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation. " This clause is the empowering act of the Ruler by which he authorises the exercise of the functions of the Federal authorities in his State, but subject to the limitations contained in his Instrument of Accession.

Clause 2 is a statutory clause required by Section 6 (1) b.

In this clause the Ruler assumes the obligation of ensuring that due effect is given within his State to the provisions of the Act, with however the important proviso " so far as they are applicable therein by virtue of his Instrument of Accession. ". By this clause the Ruler undertakes to enforce in his State the due performance of Federal functions which he has authorized the Federation to exercise.

Clause 3 provides that all functions exercisable by any Federal authority in relation to the Indian State shall be exercised exclusively by a Federal authority, with the exception of course that where a Ruler has concurrent jurisdiction, he may continue to exercise such authority.

This clause is a safeguard to prevent dual authority. It clarifies the respective authorities of the Federation and the Crown in relation to an Indian State. It is in conformity with the demand of Rulers that those matters which were made Federal should be undertaken by the Federation and not be subject to any external control. The relations of the Ruler which have heretofore been solely with the Crown are in the future to be not only with the Crown but also with the Federation. Section 285 of the Act provides that " subject to the Instrument of Accession nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State. " Relations with the Crown are therefore to be continued, and are to be continued in a manner separate and apart from the Federation. Nevertheless, certain matters which have heretofore been exclusively administered as arranged between the Ruler and the Crown, are hereafter to be within the jurisdiction of the Federal Authorities and are therefore to be carried on by the Federation in its relation with the Ruler as a member of the Federation. This clause provides in the interest of the Ruler that in those matters which are by the

Instrument of Accession recognized by the Ruler as being Federal, the Federation should have the exclusive jurisdiction. This clause is important, as it negatives a conflict of authority. It would be of value to the Federal Court in determining debatable questions, in as much as the Court's enquiry would be " is the function exercisable by a Federal authority ?", and if that question were determined in the affirmative, it would follow that no other authority had jurisdiction. The proposed clause was not approved by Parliamentary Counsel, principally on the ground that the point was covered by Section 294 (2). A careful examination of that involved section, however, shows that it does not cover the whole field of Federal authority and further that it only refers in its prohibition of the exercise of the power formally exercisable on His Majesty 's behalf within the federated State, whereas there are Federal functions affecting the State exercisable without the federated State but within the Fedetion.

This clause is still under consideration by the India Office. It should be included in the Instrument of Accession and thereby avoid all possible confusion and uncertainty with respect to authorized authority in the administration of Federal affairs.

Clause 4 is a statutory clause together with certain important additions.

The first paragraph of Clause 4 is required by Section 6 (2). In this clause, the Ruler refers to a schedule called the First Schedule which is annexed to his Instrument of Accession and in which he specifies the matters with respect to which the Federal Legislature may make laws for his State, subject to the limitations, however, contained both in the Instrument and in the Schedule with respect to the power of the Federal Legislature to make laws for his State and also the limitations of the exercise of the executive authority of the Federation in his State.

The First Schedule is of the utmost importance and will have to be drawn with reference to the prevailing conditions in each individual State with the greatest care. The items in the Federal Legislated List (Schedule 7 annexed to the Act) will have to be examined as the Ruler is called upon to designate such of the matters therein contained as applicable to his State and also to specify limitations of legislative power and of the exercise of executive authority with respect to them.

The second paragraph of Clause 4 is a safeguard which provides that the Federal Legislature " shall not have power to make laws for this State save with respect to the matters so specified and subject to the said limitations." By this safeguard the Federal Legislature is prohibited from enacting any law not expressly authorised in the First Schedule. This safeguard therefore prevents any extension of legislative power over an Indian State and prohibits any taxation or other legislative measures as regards an Indian State excepting such as the Ruler has specified in the First Schedule.

The third paragraph of Clause 4 limits the exercise of executive authority to the same extent as the legislative authority has been limited, that is to say where only restricted legislation is authorised, the administration or exercise of executive authority with respect to such matter is likewise restricted.

Clause 5 is a safeguard with respect to Treaties, Sanads and other engagements between the Rulers and the Crown. This clause provides that neither the Federal Court nor any other Federal authority shall have jurisdiction to determine the validity, effect or interpretation of any Treaty, Sanad, grant or other engagement between an Indian State and the Crown, excepting of course the Instrument of Accession or agreements made with the Federation.

It is important to the Rulers that their relations with the Crown should be kept separate and distinct from their relations with the Federation. It is therefore proposed that the Instrument of Accession should make no mention or reference to such treaties or agreements, as they do not concern the Federation. Where, however, rights are now enjoyed by any Ruler, which come within the Federal sphere, these rights will be set forth "*de novo* and *in toto*" in the First Schedule; for example, where a State enjoys the right to maintain a post office or any other right dependent upon an agreement with the Crown, such right will be preserved from Federal interference by a statement to that effect in the First Schedule. By this method the Federal Court , in case it is called upon to determine such a right, will be enabled to do so by examination of the Instrument of Accession and without reference to and examination of the treaty or agreement.

The relations of the Rulers with His Majesty guaranteed by their Treaties and Agreements will remain and the Instrument of Accession has been prepared upon the assumption that a re-affirmance of the rights, dignities and privileges of the Rulers and of their Treaties and Agreements will be made by Royal Proclamation. A separate list of such privileges is, therefore, now called for by the Viceroy's Representatives.

The Treaties and other engagements with the Crown are within the political rather than within the judicial field and should therefore not be within the jurisdiction of the Federal Court.

This clause was not given the approval of Parliamentary Counsel, who doubted the propriety of reference to the Federal Court in the Instrument of Accession. Your Counsel thereupon presented for consideration as a substitute, the following clause :—

Nothing in this Instrument shall affect my rights and obligations in relation to the Crown with respect to any matter not within the functions exercisable by or on behalf of the Federation by virtue of this Instrument, and no Federal authority shall have jurisdiction with respect to such rights and obligations.

The above clause will fulfil the same purpose as a safeguard. This matter is still under consideration by the India Office.

Clause 6 provides that laws of the Federal Legislature shall be construed as including ordinances and acts by the Governor General. This is a safeguard imposing upon the Governor General the same limitations as the Ruler by his Instrument of Accession imposes upon the Federal Legislature.

Clause 7 provides "**Nothing in this Instrument affects the continuance of my sovereignty in and over this State and subject**

to the express terms of this Instrument and to any Federal law made for this State by virtue thereof all powers authority and rights of the Ruler in and over this State and the exercise thereof are reserved to the Ruler of this State."

This clause is a fundamental and vital safeguard. It recognises that the sovereignty of the Ruler is unimpaired and continues in and over his State. This is a guarantee, not only of the recognition of the sovereignty of the Ruler by the Crown, but also a recognition of such sovereignty by the Federation and by the British Provinces.

The Indian Rulers are Sovereign in their own right over their subjects and in their States. The Federation has no suzerainty over them and no such attribute of the Crown can by Act of Parliament be transferred to the Federation.

His Majesty by an act of sovereignty establishes the Federation; he transfers the exercise of ceratin sovereign functions heretofore exercised by him to the Federation, but he does not thereby surrender an iota of his sovereignty. He reserves all his sovereignty. Sovereignty is indivisible. So also the Ruler of an Indian State, by joining Federation, performs an act of sovereignty, but he does not thereby surrender or transfer an iota of his sovereignty. He delegates the exercise of ceratin sovereign rights as defined in and limited by his Instrument of Accession. The first phrase of Clause 7 clearly safeguards the continuance of the existing sovereignty of the Ruler of an Indian State unimpaired by acceding to the Federation.

The second part of Clause 7 is also an essential safeguard. The Indian Rulers have from the beginning demanded that it should be definitely understood that all powers, authority and rights of the Ruler excepting those expressly delegated to the Federation are reserved to the Ruler. In Clause 7 it is provided that subject to the express terms of the Ruler's Instrument of Accession and to any Federal law made for his State as authorised in Schedule I all powers, authority and rights of the Ruler in and over his State and the exercise thereof **are reserved to the Ruler.** This clause is necessary as a fundamental principle to clearly define the relation of the Ruler to the Federation.

Regardless of what relations Parliament may establish with respect to the Provinces, it is essential that the principle be settled at the time of establishment, that the Federation has no power over or with respect to a Ruler or his State and is only authorised to exercise the powers expressly delegated by the Ruler to the Federation in his Instrument of Accession. All other powers are vested in the Ruler and remain with him. He is the source of powers and they cannot be taken from him by any legislative act, but can only be bestowed by him. No question of transfer or surrender of sovereignty can arise. The Ruler neither surrenders nor transfers sovereignty by uniting with others in the creation of the Federation, nor by his declaration acceding to Federation.

The Ruler delegates certain functions of Government, the exercise of certain rights, he does not submerge himself in the Federation, but authorises the Federation to exercise certain functions with respect to his State and on his behalf for the purpose of furthering the interest and welfare of India as a whole including his own State.

The act of uniting in the establishment and acceding to Federation is an assertion and exercise of sovereignty and the delegation of certain powers reserving all others is also a sovereign act.

This clause is a fundamental provision of the utmost importance. It will serve as a guide to the Federal Court in determining the relation of an Indian State to the Federation as it makes clear that the Federation only acquires powers granted and all other powers remain in the Ruler.

To paraphrase the words of Judge Cooley (Principles of Constitutional Law, page 31) " to ascertain whether any power assumed by the Federation is rightly assumed, the Instrument of Accession is to be examined in order to see whether expressly or by fair implication the power has been granted. "

Clause 7 should stand as it is drawn. Any proposal to change it should be scrutinised with the utmost care.

Clause 8 is a safeguard providing that Parliament is not authorised " to legislate for or exercise jurisdiction over this State or its Ruler in any respect. " By this clause it is recognised that by joining Federation the Ruler does not in any respect bring himself or his State within the jurisdiction of Parliament, his relations with the Crown continue by reason of his treaties and agreements with the Crown, and his relations with the Federation are established and defined by his Instrument of Accession. This is an important clause to prevent any misconstruction which might arise under the Government of India Act as to the powers of Parliament with respect to an Indian State.

The second paragraph of Clause 8 is a statutory declaration required by Section 6 (5) that the provisions of the Government of India Act 1935 affecting British India mentioned in the Second Schedule annexed to the Act may be amended, but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, extend the functions which by virtue of his Instrument of Accession are exercisable by His Majesty or any Federal authority in relation to his State.

This provision permits Parliament to make amendments with respect to British India, but such amendments are not applicable to the Ruler of an Indian State unless accepted by him.

Clause 9 provides that the Schedules shall form an integral part of the Instrument of Accession.

Clause 10 provides that the Instrument shall be binding from the date on which His Majesty signifies his acceptance and that it shall be null and void unless the Federation is established before a date which has been left blank as the date has not yet been agreed upon.

Clause 11 provides that the Instrument shall be binding upon the Ruler, his heirs and successors.

The attestation of the Instrument is to be drawn with all due formality appropriate to the declaration of a Ruler.

In addition to the above clauses, the following clauses are to be added to the Instrument of all States to which they apply.

Clause A is a statutory clause pursuant to Section 125 of the Act stating that the agreements with respect to administration by the Ruler in his State of laws of the Federal Legislature applying therein have been agreed upon by the Ruler and the Governor General and are set out in the Second Schedule annexed, which agreements shall be deemed to form part of the Instrument of Accession.

This clause applies only to those States whose Rulers desire to take over the administration of any Federal laws in their States and where agreements to that effect have been made with the Governor General.

Clause B provides that the Sections of the Act 130 to 133 with respect to Water Supplies shall not apply to the State.

This clause is an optional statutory provision authorised by Section 134 of the Act pursuant to which the Ruler may in his Instrument of Accession declare that the provisions with respect to interference with Water Supplies shall not apply to his State.

Clause C is a statutory clause which provides that the particulars to enable due effect to be given to the provisions of Sections 147 and 149 of the Act are set forth in the Third Schecdule annexed.

This clause will only be added to the Instruments of Accession of the Rulers of those States in which there are adjustments to be made with respect to " contributions " payable by his State and the value to be attributed to any privilege or immunity enjoyed by him.

Clause D provides that nothing in the Instrument of Accession " shall be deemed to affect the rights set forth in the Fourth Schedule annexed." This demand is now to be met by inclusion in the Proclamation or Instrument of Instructions.

The purpose of this clause is to provide a schedule in which the Ruler may by reservation protect any rights which he enjoys outside his State. It would only apply to such States as now enjoy by either agreement or practice a privilege or right which could not be reserved by the limitations set forth in the First Schedule annexed to the Instrument which applies only to laws for the State. The statement of such extra-territorial rights in the Fourth Schedule would be of value to the Governor General in preventing Federal Legislation, which would interfere with such an existing right now enjoyed by the Ruler outside the boundaries of his State i.e. a right to free Salt.

The clause is for protection in case of a law not enacted for the Ruler's State but which although not applying therein may affect rights he now enjoys outside his State.

The foregoing Preamble and clauses constituting the Instrument of Accession do not contain all the safeguards which are requisite in the interests of the Indian Rulers who accede to Federation. There are a number of additional safeguards which should be otherwise provided for.

In Schedule I which is to be annexed to the Instrument it would be necessary to include not only the limitations of legislative power and the exercise of executive authority, but also definition and limitation of the items enumerated in the Federal Legislative List (List 1, Schedule 7 of the Act.)

The First Schedule may also contain suitable provisions with respect (a) to the conformity by Federal agents, officers and representatives to the laws and regulations of the State not inconsistent with the due exercise of their Federal functions and (b) providing that the acquisition of property within the State for any Federal use shall only be with the consent of the Ruler and upon payment of just compensation.

In addition to the safeguards contained in the Instrument of Accession and in the Schedules thereto annexed, there are other safeguards which should be obtained through other means, as set forth in the Memorandum submitted herewith and entitled "Memorandum by Judge Wadhams with respect to Additional safeguards not contained in the Instrument of Accession and the Schedules thereto annexed."

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3117/C.B 55-86-10

Dear Sir

I am desired to acknowledge, with thanks, the receipt of the printed collection of the periodical reports on the work done in England during the year 1936 by Counsel for the Chamber of Princes with regard to the draft Instrument of accession, kindly sent with your Circular letter dated 19th June 1937.

Y. S

B

A. Majid Khan, Esqr.,
Under Secretary to His Highness
The Chancellor, Chamber of Princes,
Council House, New Delhi.